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**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

KRISHNA MOVVA, derivatively on behalf of  
UNITY SOFTWARE INC.,

Plaintiff,

v.

JOHN S. RICCITIELLO, KIMBERLY JABAL,  
LUIS FELIPE VISOSO, ROELOF BOTHA,  
EGON DURBAN, DAVID HELGASON,  
ALYSSA HENRY, BARRY SCHULER,  
ROBYNNE SISCO, MARY SCHMIDT  
CAMPBELL, and KEISHA SMITH JEREMIE,

Defendants,

and

UNITY SOFTWARE INC.,

Nominal Defendant.

Case No.:

DEMAND FOR JURY TRIAL

**VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**

## **INTRODUCTION**

Plaintiff Krishna Movva (“Plaintiff”), by Plaintiff’s undersigned attorneys, derivatively and on behalf of nominal defendant Unity Software Inc. (“Unity” or the “Company”), files this Verified Shareholder Derivative Complaint against defendants John S. Riccitiello (“Riccitiello”), Kimberly Jabal (“Jabal”), Luis Felipe Visoso (“Visoso”), Roelof Botha (“Botha”), Egon Durban (“Durban”), David Helgason (“Helgason”), Alyssa Henry (“Henry”), Barry Schuler (“Schuler”), Robynne Sisco (“Sisco”), Mary Schmidt Campbell (“Schmidt”), and Keisha Smith Jeremie (“Smith”) (collectively, the “Individual Defendants,” and together with Unity, the “Defendants”) for breaches of their fiduciary duties as directors and/or officers of Unity, waste of corporate assets, unjust enrichment, against Defendants Riccitiello, Botha, Durban, Helgason, Henry, Schmidt, Schuler, Sisco, and Smith for violations of Section 14(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and against Defendants Riccitiello, Jabal, and Visoso for contribution under Sections 10(b) and 21D of the Exchange Act. As for Plaintiff’s complaint against the Individual Defendants, Plaintiff alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Unity, legal filings, news reports, securities analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

## **NATURE OF THE ACTION**

1. This is a shareholder derivative action that seeks to remedy wrongdoing committed by Unity’s directors and officers from March 5, 2021 through May 10, 2022 (the “Relevant Period”).

2. Unity is a San Francisco-based, video game software development company. The Company’s platform, which is comprised of two distinct but synergistic segments—Create Solutions and Operate Solutions, was developed to create and operate real-time 2D and 3D content for multiple

1 platforms, including mobile phones, personal computers, consoles, and virtual reality devices. Content  
2 made on the Company's platform is interactive, allowing end-users to connect with the content and with  
3 each other, and real-time, allowing the content to adapt to end-user behavior and feedback.

4 3. The Create Solutions segment offers a set of tools for artists, designers, and developers  
5 across a range of industries to create, edit, run, and deploy high-definition, real-time 2D and 3D content.  
6 Although this business is driven by the gaming sector, business outside of gaming, such as from the  
7 aerospace, medical, and manufacturing industries, has also been growing. The Company offers Create  
8 Solutions primarily through monthly subscriptions, which in turn drive the adoption of Operate Solutions.

9 4. As many of the Company's customers develop games and applications ("app") with the  
10 intention of building a profitable business, the Company offers user acquisition products and monetization  
11 products through its Operate Solutions segment to allow customers to grow their user bases and to run and  
12 monetize their content as users engage over time with the content. The Company offers Operate Solutions  
13 primarily through a combination of revenue-share and consumption-based models. Revenue generated by  
14 Operate Solutions generally makes up most the Company's revenue.

15 5. Audience Pinpointer, one of the Company's purported user acquisition tools, uses machine  
16 learning to evaluate real-time in-app behavior at the moment of an ad request to help customers find the  
17 users most likely to provide value beyond the initial installation of the game or application. Audience  
18 Pinpointer experienced significant growth ever since Apple Inc.'s ("Apple") decision in 2021 to provide  
19 users with the choice to block the Identifier for Advertisers, a unique identifier assigned to a user's iOS  
20 device that is used to target and determine the effectiveness of advertising on a user level. The reason for  
21 the significant growth was that advertisers viewed Audience Pinpointer as a workaround to Apple's  
22 privacy changes since Audience Pinpointer did not rely on Apple's data.

23 6. Throughout the Relevant Period, the Individual Defendants made and/or caused the  
24 Company to make false and misleading statements and omissions of material fact that touted the  
25 Company's platform, including its user acquisition products, as well as the Company's business and  
26 prospects.  
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\* \* \*

8. The truth emerged on May 10, 2022, after markets closed, when the Company issued a press release announcing its first quarter 2022 financial results. The press release disclosed that the Company was lowering its guidance for the full year ending December 31, 2022, stating, in relevant part: “Unity is providing the following guidance for the second quarter and lowering guidance for the full year ending December 31, 2022 due to challenges with monetization products that we expect to impact 2022.”

Non-GAAP operating margin of minus 7.2% improved 280 basis points from the first quarter of last year as we continued to invest in innovation to capture the very large opportunity in front of us, while improving non-GAAP operating margins.

I'd like to address our Operate business first. Operate started the year strong in January, but then significantly slowed down in February and March. This resulted in first-quarter revenue of \$184 million, an increase of 26% year on year. While there are external factors to consider, the Operate challenge is mostly caused by internal factors in Unity monetization in an otherwise healthy market. We see these challenges as temporary and not structural and do not expect them to impact future prospects of our business beyond 2022.

The most succinct framing for the challenges we are facing is that we built more for growth and less for resiliency. Following years of rapid growth and working through the challenges of Apple's privacy changes, we got hit hard by two issues.

The first was a fault in our platform that resulted in reduced accuracy for our Audience Pinpointer tool, a revenue expensive issue given that our Pinpointer tool experienced significant growth post the IDFA changes. The second is that we lost the value of a portion of our data, training data due in part to us ingesting bad data from a large customer. We estimate the impact to our business of approximately \$110 million in 2022 with no carryover impact to 2023. Luis will provide a more granular update to our guidance in a few minutes.

10. On this news, the Company's share price plummeted \$17.83 (or 37%) from a close of \$48.13 per share on May 10, 2022 to a close of \$30.30 per share on May 11, 2022.

11. During the Relevant Period, the Individual Defendants breached their fiduciary duties by personally making and/or causing the Company to make to the investing public a series of materially false and misleading statements and omissions regarding the Company's business, operations, and prospects. Specifically, the Individual Defendants willfully or recklessly made and/or caused the Company to make false and misleading statements to the investing public that failed to disclose, *inter alia*, that: (1) technical issues with the Company's monetization platform caused a data quality issue as well as problems with the accuracy of the Company's Audience Pinpointer tool; (2) the drop in the accuracy of the Audience Pinpointer tool led to a drop in the usage of the tool, impacting the Company's monetization business; (3) due to the foregoing, the Company's revenues were likely to be negatively affected; (4) accordingly, a reduction in the Company's guidance for the full year ending December 31, 2022 was to be expected; (5) as a result, the Company had overstated its prospects for 2022; and (6) the Company failed to maintain internal controls. As a result of the foregoing, the Company's public statements were materially false and misleading at all relevant times.

12. The Individual Defendants failed to correct and/or caused the Company to fail to correct

1 these false and misleading statements and omissions of material fact, rendering them personally liable to  
2 the Company for breaching their fiduciary duties.

3 13. The Individual Defendants also breached their fiduciary duties by causing the Company to  
4 fail to maintain internal controls.

5 14. In yet further breach of their fiduciary duties, six of the Individual Defendants engaged in  
6 lucrative insider sales of Company common stock at artificially inflated prices, obtaining collective  
7 proceeds of approximately \$734.8 million.

8 15. In light of the Individual Defendants' misconduct—which has subjected the Company, its  
9 Chief Executive Officer ("CEO"), and its former and current Chief Financial Officers ("CFO") to being  
10 named as defendants in a federal securities fraud class action lawsuit pending in the United States District  
11 Court for the Northern District of California (the "Securities Class Action"), the need to undertake internal  
12 investigations, the need to implement adequate internal controls over its financial reporting, the losses  
13 from the waste of corporate assets, and the losses due to the unjust enrichment of the Individual Defendants  
14 who were improperly overcompensated by the Company and/or who benefitted from the wrongdoing  
15 alleged herein—the Company will have to expend many millions of dollars.

16 16. In light of the breaches of fiduciary duty engaged in by the Individual Defendants, most of  
17 whom are the Company's current directors, their collective engagement in fraud, the substantial likelihood  
18 of the directors' liability in this derivative action and Defendant Riccitiello's, Defendant Jabal's, and  
19 Defendant Visoso's liability in the Securities Class Action, their being beholden to each other, their  
20 longstanding business and personal relationships with each other, and their not being disinterested and/or  
21 independent directors, a majority of Unity's Board of Directors (the "Board") cannot consider a demand  
22 to commence litigation against themselves on behalf of the Company with the requisite level of  
23 disinterestedness and independence.

#### 24 **JURISDICTION AND VENUE**

25 17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's  
26 claims raise a federal question under Section 14(a) of the Exchange Act (15 U.S.C. § 78n(a)(1)), Rule  
27  
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14a-9 of the Exchange Act (17 C.F.R. § 240.14a-9), Section 10(b) of the Exchange Act (15 U.S.C. §§ 78j(b)), and Section 21D of the Exchange Act (15 U.S.C. § 78u-4(f)).

18. Plaintiff's claims also raise a federal question pertaining to the claims made in the Securities Class Action based on violations of the Exchange Act.

19. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

20. This derivative action is not a collusive action to confer jurisdiction on a court of the United States that it would not otherwise have.

21. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1401 because a substantial portion of the transactions and wrongs complained of herein occurred in this District, Defendants have conducted business in this District, Defendants' actions have had an effect in this District, and Unity is headquartered in this District.

## **PARTIES**

### **Plaintiff**

22. Plaintiff is a current shareholder of Unity common stock. Plaintiff has continuously held Unity common stock at all relevant times.

### **Nominal Defendant Unity**

23. Unity is a Delaware corporation with its principal executive offices located at 30 3rd Street, San Francisco, CA 94103-3104. Unity's shares trade on the New York Stock Exchange ("NYSE") under the ticker symbol "U."

### **Defendant Riccitiello**

24. Defendant Riccitiello has served as the Company's President and CEO since October 2014, as Executive Chairman of the Board since June 2014, and as a Company director since November 2013. According to the Company's proxy statement filed on Schedule 14A with the SEC on April 20, 2022 (the "2022 Proxy Statement"), as of April 1, 2022, Defendant Riccitiello beneficially owned 8,364,921 shares of the Company's common stock, representing 2.8% of the Company's total outstanding common stock as of that date. Given that the price per share of the Company's common stock at the close of trading on



April 1, 2022 was \$98.92, Defendant Riccitiello beneficially owned approximately \$827.5 million worth of Unity stock.

25. For the fiscal year ended December 31, 2021 (the “2021 Fiscal Year”), Defendant Riccitiello received \$12,501,471 in total compensation from the Company. This included \$376,682 in salary, \$5,478,006 in stock awards, \$6,025,215 in option awards, and \$621,568 in non-equity incentive plan compensation.

26. During the period when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Riccitiello made the following sales of company stock at artificially inflated prices:

Date	Shares Sold	Avg. Price Per Share	Proceeds
April 1, 2021	229,372	\$102.05	\$23,407,641
June 1, 2021	229,372	\$94.21	\$21,608,677
July 1, 2021	229,372	\$107.86	\$24,739,834
August 2, 2021	229,372	\$106.64	\$24,460,688
September 1, 2021	229,372	\$126.96	\$29,120,839
October 1, 2021	229,372	\$125.82	\$28,859,355
November 1, 2021	229,382	\$151.24	\$34,691,045
December 1, 2021	216,824	\$164.24	\$35,611,824
December 1, 2021	12,248	\$164.16	\$2,010,631
January 3, 2022	229,192	\$140.14	\$32,118,737

Thus, in total, before the fraud was exposed, he sold 2,063,878 shares of Company common stock at artificially inflated prices on inside information, for which he received approximately \$256.6 million. His insider sales made with knowledge of material nonpublic information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

27. The 2022 Proxy Statement stated the following regarding Defendant Riccitiello:

Mr. Riccitiello has served as our President and Chief Executive Officer since October 2014, as Executive Chairman of our Board since June 2014, and as a member of our Board since November 2013. From April 2007 to February 2013, Mr. Riccitiello served as the Chief



Executive Officer for Electronic Arts, Inc., a public video game developer and publisher, where he had previously served as President and Chief Operating Officer from October 1997 to April 2004. From May 2004 to March 2007, Mr. Riccitiello co-founded and served as a Managing Director of Elevation Partners, LLC, a private equity firm. Mr. Riccitiello holds a B.S. in business administration from the Haas School of Business at the University of California, Berkeley.

### **Defendant Jabal**

28. Defendant Jabal served as the Company's Senior Vice President and CFO from March 2019 until April 2021. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Jabal beneficially owned 39,250 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on April 1, 2022 was \$98.92, Defendant Jabal beneficially owned approximately \$3.9 million worth of Unity stock.

29. For the 2021 Fiscal Year, Defendant Jabal received \$13,086,010 in total compensation from the Company. This included \$164,284 in salary, \$662,906 in stock awards, \$11,959,124 in option awards, and \$299,696 in all other compensation.

30. During the period when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Jabal made the following sales of company stock at artificially inflated prices:

<b>Date</b>	<b>Shares Sold</b>	<b>Avg. Price Per Share</b>	<b>Proceeds</b>
March 15, 2021	10,050	\$108.10	\$1,086,425

Thus, in total, before the fraud was exposed, she sold 10,050 shares of Company common stock at artificially inflated prices on inside information, for which she received approximately \$1.1 million. Her insider sales made with knowledge of material nonpublic information before the material misstatements and omissions were exposed demonstrate her motive in facilitating and participating in the scheme.

31. The Company's press release issued on February 14, 2019 stated the following about Defendant Jabal:

Jabal brings decades of experience in senior positions scaling businesses and navigating growth. She joins Unity from Weebly where she served as CFO, responsible for selling the company to Square in May 2018. Previous to Weebly, Jabal was the CFO at Path, Inc., and held senior leadership positions at Lytro, Inc. and Google -- where she helped lead the company from less than \$1 billion to \$36 billion in revenue.

**Defendant Visoso**

32. Defendant Visoso has served as the Company's Senior Vice President and CFO since April 2021. He also served as a Company director from September 2020 until April 2021. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Visoso beneficially owned 75,000 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on April 1, 2022 was \$98.92, Defendant Visoso beneficially owned approximately \$7.4 million worth of Unity stock.

33. For the 2021 Fiscal Year, Defendant Visoso received \$41,580,607 in total compensation from the Company. This included \$260,041 in salary, \$2,000,000 in bonus, \$35,210,000 in stock awards, \$3,765,720 in option awards, \$334,444 in non-equity incentive plan compensation, and \$10,402 in all other compensation.

34. During the period when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Visoso made the following sales of company stock at artificially inflated prices:

Date	Shares Sold	Avg. Price Per Share	Proceeds
May 26, 2021	24,487	\$96.46	\$2,362,089
August 26, 2021	27,827	\$124.67	\$3,469,275

Thus, in total, before the fraud was exposed, he sold 52,314 shares of Company common stock at artificially inflated prices on inside information, for which he received approximately \$5.8 million. His insider sales made with knowledge of material nonpublic information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

35. The 2022 Proxy Statement stated the following regarding Defendant Visoso:

Mr. Visoso has served as our Senior Vice President and Chief Financial Officer since April 2021. He previously served as a member of our board of directors from September 2020 to April 2021. From July 2020 through March 2021, Mr. Visoso served as Chief Financial Officer of Palo Alto Networks, Inc., a public cybersecurity company. From December 2018 to July 2020, Mr. Visoso served in various roles at Amazon.com, Inc., a public e-commerce marketplace company, including as Chief Financial Officer of Amazon Web Services. From February 2016 to December 2018, Mr. Visoso served as Senior Vice President of Business, Technology and Operations Finance at Cisco Systems, Inc., a public networking company. From January 1993 to February 2016, Mr. Visoso held various roles at The Procter & Gamble Company, a public consumer goods company, including Vice President

of Global Business Units-Finance and Accounting. Mr. Visoso also serves on the board of Splunk Inc., a public software company. Mr. Visoso holds a B.A. degree in international business and industrial engineering from Monterrey Institute of Technology and Higher Education.

**Defendant Botha**

36. Defendant Botha has served as a Company director since September 2009. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Botha beneficially owned 1,442,349 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on April 1, 2022 was \$98.92, Defendant Botha beneficially owned approximately \$142.7 million worth of Unity stock.

37. For the 2021 Fiscal Year, Defendant Botha received \$284,992 in stock awards, which was also his total compensation from the Company.

38. The 2022 Proxy Statement stated the following about Defendant Botha:

Since January 2003, Mr. Botha has served in various positions at Sequoia Capital, a venture capital firm, including as a Managing Member of Sequoia Capital Operations, LLC since 2007. From March 2000 to June 2003, Mr. Botha served in various positions at PayPal, Inc., a public online payments company, including as Chief Financial Officer. Mr. Botha currently serves on the boards of directors of 23andMe Holding Co., a personal genetics company, Bird Global, Inc., an electric vehicle ridesharing company, Eventbrite, Inc., a global platform for live experiences, Block, Inc., a provider of payment processing and financial and marketing services, MongoDB, Inc., a cross-platform database program, Natera, Inc., a genetic testing company, as well as a number of privately-held companies. Mr. Botha holds a B.S. in actuarial science, economics and statistics from the University of Cape Town and an M.B.A. from the Stanford University Graduate School of Business.

**Defendant Durban**

39. Defendant Durban has served as a Company director since June 2017. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Durban beneficially owned 129,510 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on April 1, 2022 was \$98.92, Defendant Durban beneficially owned approximately \$12.8 million worth of Unity stock.

40. For the 2021 Fiscal Year, Defendant Durban received \$259,962 in stock awards, which was also his total compensation from the Company.

41. During the period when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Durban made the following sales of company stock at artificially inflated prices:

Date	Shares Sold	Avg. Price Per Share	Proceeds
November 17, 2021	552,549	\$195.41	\$107,971,389
November 18, 2021	305,653	\$205.29	\$62,746,587
November 18, 2021	139,004	\$197.76	\$27,489,987
November 19, 2021	244,263	\$194.88	\$47,601,973
November 22, 2021	72,687	\$182.02	\$13,230,487
November 22, 2021	110,645	\$189.98	\$21,019,894
November 23, 2021	330,493	\$180.40	\$59,619,284
November 24, 2021	50,000	\$180.95	\$9,047,700
November 26, 2021	79,763	\$177.25	\$14,137,592

Thus, in total, before the fraud was exposed, he sold 1,885,057 shares of Company common stock at artificially inflated prices on inside information, for which he received approximately \$362.9 million. His insider sales made with knowledge of material nonpublic information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

42. The 2022 Proxy Statement stated the following about Defendant Durban:

Mr. Durban joined Silver Lake, a global technology investment firm, in 1999 as a founding principal and has served as the firm's Co-Chief Executive Officer and Managing Partner since December 2019. He also serves on the board of directors of Endeavor Group Holdings, Inc., an entertainment, sports and media platform, Twitter, Inc., a social networking service, Dell Technologies Inc., an information technology company, Motorola Solutions, Inc., a multinational telecommunications company, Qualtrics International Inc., a customer experience management company, VMware, Inc., a software company, and several privately-held companies. Mr. Durban also served as a director at Pivotal Software, Inc., a software and services company, from 2016 until its acquisition in 2019, and at SecureWorks Corp., an information security services company, from 2015 to May 2020. Mr. Durban holds a B.S.B.A in Finance from Georgetown University.

**Defendant Helgason**

43. Defendant Helgason co-founded the Company in August 2004 and has served as a Company director since May 2015. He also served as the Company's President and CEO from August 2004 until October 2014 and as a Company director from August 2004 until June 2014. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Helgason beneficially owned 9,151,613 shares of the Company's common stock, representing 3.1% of the Company's total outstanding common stock as of that date. Given that the price per share of the Company's common stock at the close of trading on April 1, 2022 was \$98.92, Defendant Helgason beneficially owned approximately \$905.3 million worth of Unity stock.

44. For the 2021 Fiscal Year, Defendant Helgason received \$249,991 in stock awards, which was also his total compensation from the Company.

45. During the period when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Helgason made the following sales of company stock at artificially inflated prices:

Date	Shares Sold	Avg. Price Per Share	Proceeds
August 12, 2021	12,742	\$124.50	\$1,586,379
November 22, 2021	50,000	\$180.07	\$9,003,500
November 23, 2021	50,000	\$178.67	\$8,933,300
November 24, 2021	67,554	\$178.52	\$12,059,875
November 26, 2021	50,000	\$178.53	\$8,926,700
November 29, 2021	50,000	\$169.70	\$8,484,900
November 30, 2021	50,000	\$170.27	\$8,513,700
December 1, 2021	50,000	\$164.09	\$8,204,600
December 2, 2021	50,000	\$153.21	\$7,660,700
December 3, 2021	50,000	\$146.50	\$7,325,199
December 6, 2021	55,000	\$142.47	\$7,836,015
December 7, 2021	50,000	\$152.30	\$7,615,000

December 8, 2021	5,000	\$154.50	\$772,500
December 13, 2021	15,000	\$139.76	\$2,096,474
March 2, 2022	83,333	\$101.49	\$8,457,466

Thus, in total, before the fraud was exposed, he sold 688,629 shares of Company common stock at artificially inflated prices on inside information, for which he received approximately \$107.5 million. His insider sales made with knowledge of material nonpublic information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

46. The 2022 Proxy Statement stated the following about Defendant Helgason:

Mr. Helgason co-founded our company in 2004. He served as a member of our board from July 2007 to June 2014, and was reappointed as a director in May 2015. From August 2004 to October 2014, Mr. Helgason served as our President and Chief Executive Officer. Mr. Helgason is a founding General Partner of Transition Global, a venture capital firm focused on solving the world's climate crisis, where he has served since October 2021. From July 2016 to March 2021, Mr. Helgason served as a Partner at Nordic Makers General Partners ApS, an early-stage venture capital firm. Mr. Helgason serves on the board of several privately-held companies. Mr. Helgason studied physics, Arabic, and psychology at the University of Copenhagen from 1997 to 2001.

#### **Defendant Henry**

47. Defendant Henry has served as a Company director since October 2018. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Henry beneficially owned 123,599 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on April 1, 2022 was \$98.92, Defendant Henry beneficially owned approximately \$12.2 million worth of Unity stock.

48. For the 2021 Fiscal Year, Defendant Henry received \$274,917 in stock awards, which was also her total compensation from the Company.

49. The 2022 Proxy Statement stated the following about Defendant Henry:

Since May 2014, Ms. Henry has held several roles at Block, Inc. (formerly Square), a public financial services and payment processing company, currently serving as Square Lead and Block Infrastructure and Information Security Lead. From 2006 to 2014, Ms. Henry served in various positions for Amazon.com Inc., an e-commerce company, including as Vice President of Amazon Web Services Storage Services. Ms. Henry serves as a member of the board of directors of Intel Corporation, a semiconductor and technology company and

Confluent, Inc., a data infrastructure company. Ms. Henry holds a B.S. in mathematics and applied science with a specialization in computing from the University of California, Los Angeles.

### **Defendant Schuler**

50. Defendant Schuler has served as a Company director since April 2016. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Schuler beneficially owned 297,649 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on April 1, 2022 was \$98.92, Defendant Schuler beneficially owned approximately \$29.4 million worth of Unity stock.

51. For the 2021 Fiscal Year, Defendant Schuler received \$274,917 in stock awards, which was also his total compensation from the Company.

52. During the period when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Schuler made the following sales of company stock at artificially inflated prices:

Date	Shares Sold	Avg. Price Per Share	Proceeds
May 19, 2021	10,000	\$87.60	\$876,000

Thus, in total, before the fraud was exposed, he sold 10,000 shares of Company common stock at artificially inflated prices on inside information, for which he received \$876,000. His insider sales made with knowledge of material nonpublic information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

53. The 2022 Proxy Statement stated the following about Defendant Schuler:

In 2006, Mr. Schuler co-founded the DFJ Growth Fund, where he currently serves as Managing Director and Partner. From 1995 to 2002, Mr. Schuler held various roles at America Online Inc., a web portal and online service provider, including Chairman and Chief Executive Officer. Mr. Schuler serves on the board of a number of privately-held companies. Mr. Schuler holds a B.A. in psychology from Rutgers University.

### **Defendant Sisco**

54. Defendant Sisco has served as a Company director since July 2017. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Sisco beneficially owned 37,916 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on



1 April 1, 2022 was \$98.92, Defendant Sisco beneficially owned approximately \$3.8 million worth of Unity  
2 stock.

3 55. For the 2021 Fiscal Year, Defendant Sisco received \$274,917 in stock awards, which was  
4 also her total compensation from the Company.

5 56. The 2022 Proxy Statement said the following about Defendant Sisco:

6 Since August 2012, Ms. Sisco has held various positions at Workday, Inc., a public human  
7 resources and financial management software company, including Co-President from  
8 February 2018, Chief Financial Officer from April 2016 to January 2022 and Senior Vice  
9 President and Chief Accounting Officer from August 2012 to April 2016. From June 2009  
10 to August 2012, Ms. Sisco served as Chief Accounting Officer and Corporate Controller  
11 at VMware, Inc., a software company. Ms. Sisco also previously served as Senior Vice  
12 President and Chief Accounting Officer at VeriSign Inc., and held senior finance positions  
at Oracle Corporation, Visa Inc., GE Capital, and Ford Motor Company. Ms. Sisco holds  
a B.A. in economics and accounting from Claremont McKenna College and an M.B.A. in  
finance from Golden Gate University.

### 13 **Defendant Schmidt**

14 57. Defendant Schmidt has served as a Company director since September 2020. According to  
15 the 2022 Proxy Statement, as of April 1, 2022, Defendant Schmidt beneficially owned 6,942 shares of the  
16 Company's common stock. Given that the price per share of the Company's common stock at the close  
17 of trading on April 1, 2022 was \$98.92, Defendant Schmidt beneficially owned approximately \$686,703  
18 worth of Unity stock.

19 58. For the 2021 Fiscal Year, Defendant Schmidt received \$259,962 in stock awards, which  
20 was also her total compensation from the Company.

21 59. The 2022 Proxy Statement stated the following about Defendant Schmidt:

22 Since August 2015, Dr. Campbell has served as President of Spelman College, a liberal  
23 arts college and historically Black college for women. From October 1991 to May 2014,  
24 she served in various roles at New York University, a private research university, including  
25 as Dean of the Tisch School of the Arts and as Associate Provost for the Arts, and upon  
26 her retirement in 2014, she was appointed Dean Emerita. From October 2009 to October  
27 2016, Dr. Campbell served as Vice-Chair of the President's Committee on the Arts and  
28 Humanities, a bi-partisan group of citizens appointed by the President of the United States  
to advise the Office of the White House on issues regarding arts and the humanities. Prior  
to her service at NYU, from 1987-1991, she was New York City's Cultural Affairs  
Commissioner, under Mayor Edward I. Koch and Mayor David Dinkins. From 1977 to  
1987, she served as the director of the Studio Museum in Harlem, developing the first  
accredited Black fine arts museum in the United States. Dr. Campbell holds a B.A. degree

in English literature from Swarthmore College and an M.A. in art history and Ph.D. in humanities from Syracuse University.

**Defendant Smith**

60. Defendant Smith has served as a Company director since August 2021. According to the 2022 Proxy Statement, as of April 1, 2022, Defendant Smith beneficially owned 934 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on April 1, 2022 was \$98.92, Defendant Smith beneficially owned approximately \$92,391 worth of Unity stock.

61. For the 2021 Fiscal Year, Defendant Smith received \$399,966 in stock awards, which was also her total compensation from the Company.

62. The 2022 Proxy Statement said the following about Defendant Smith:

Since August 2018, Ms. Smith-Jeremie has served as the Chief People Officer of Tory Burch, an American fashion label. From January 2013 until August 2018, she served as Chief Human Resources Officer of News Corporation, a mass media and publishing company. From July 2001 to December 2012, she served in various roles, including as Global Co-Head of Talent Management, at Morgan Stanley, a multinational investment bank and financial services company. Ms. Smith-Jeremie holds a B.A. in International Relations from the University of Virginia.

**FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS**

63. By reason of their positions as officers, directors, and/or fiduciaries of Unity and because of their ability to control the business and corporate affairs of Unity, the Individual Defendants owed Unity and its shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Unity in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Unity and its shareholders so as to benefit all shareholders equally.

64. Each director and officer of the Company owes to Unity and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the Company and in the use and preservation of its property and assets and the highest obligations of fair dealing.

65. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Unity, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

1           66. To discharge their duties, the officers and directors of Unity were required to exercise  
2 reasonable and prudent supervision over the management, policies, controls, and operations of the  
3 Company.

4           67. Each Individual Defendant, by virtue of their position as a director and/or officer, owed to  
5 the Company and to its shareholders the highest fiduciary duties of loyalty, good faith, and the exercise  
6 of due care and diligence in the management and administration of the affairs of the Company, as well as  
7 in the use and preservation of its property and assets. The conduct of the Individual Defendants  
8 complained of herein involves a knowing and culpable violation of their obligations as directors and  
9 officers of Unity, the absence of good faith on their part, or a reckless disregard for their duties to the  
10 Company and its shareholders that the Individual Defendants were aware or should have been aware posed  
11 a risk of serious injury to the Company. The conduct of the Individual Defendants who were also officers  
12 and directors of the Company has been ratified by the remaining Individual Defendants who collectively  
13 comprised Unity's Board at all relevant times.

14           68. As senior executive officers and directors of a publicly-traded company whose common  
15 stock was registered with the SEC pursuant to the Exchange Act and traded on the NYSE, the Individual  
16 Defendants had a duty to prevent and not to effect the dissemination of inaccurate and untruthful  
17 information with respect to the Company's financial condition, performance, growth, operations, financial  
18 statements, business, products, management, earnings, internal controls, and present and future business  
19 prospects, and had a duty to cause the Company to disclose omissions of material fact in its regulatory  
20 filings with the SEC all those facts described in this Complaint that it failed to disclose, so that the market  
21 price of the Company's common stock would be based upon truthful and accurate information.

22           69. To discharge their duties, the officers and directors of Unity were required to exercise  
23 reasonable and prudent supervision over the management, policies, practices, and internal controls of the  
24 Company. By virtue of such duties, the officers and directors of Unity were required to, among other  
25 things:

26                   (a) ensure that the Company was operated in a diligent, honest, and prudent manner in  
27 accordance with the laws and regulations of Delaware, California, and the United States, and pursuant to  
28

1 Unity's own Global Code of Conduct and Ethics (the "Code of Conduct");

2 (b) conduct the affairs of the Company in an efficient, business-like manner so as to  
3 make it possible to provide the highest quality performance of its business, to avoid wasting the  
4 Company's assets, and to maximize the value of the Company's stock;

5 (c) remain informed as to how Unity conducted its operations, and, upon receipt of  
6 notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry in  
7 connection therewith, and to take steps to correct such conditions or practices;

8 (d) establish and maintain systematic and accurate records and reports of the business  
9 and internal affairs of Unity and procedures for the reporting of the business and internal affairs to the  
10 Board and to periodically investigate, or cause independent investigation to be made of, said reports and  
11 records;

12 (e) maintain and implement an adequate and functioning system of internal legal,  
13 financial, and management controls, such that Unity's operations would comply with all applicable laws  
14 and Unity's financial statements and regulatory filings filed with the SEC and disseminated to the public  
15 and the Company's shareholders would be accurate;

16 (f) exercise reasonable control and supervision over the public statements made by the  
17 Company's officers and employees and any other reports or information that the Company was required  
18 by law to disseminate;

19 (g) refrain from unduly benefiting themselves and other Company insiders at the  
20 expense of the Company; and

21 (h) examine and evaluate any reports of examinations, audits, or other financial  
22 information concerning the financial affairs of the Company and to make full and accurate disclosure of  
23 all material facts concerning, *inter alia*, each of the subjects and duties set forth above.

24 70. Each of the Individual Defendants further owed to Unity and the shareholders the duty of  
25 loyalty requiring that each favor Unity's interests and that of its shareholders over their own while  
26 conducting the affairs of the Company and refrain from using their position, influence, or knowledge of  
27 the affairs of the Company to gain personal advantage.  
28

1           71. At all times relevant hereto, the Individual Defendants were the agents of each other and  
2 of Unity and were at all times acting within the course and scope of such agency.

3           72. Because of their advisory, executive, managerial, and directorial positions with Unity, each  
4 of the Individual Defendants had access to adverse, nonpublic information about the Company.

5           73. The Individual Defendants, because of their positions of control and authority, were able  
6 to and did, directly or indirectly, exercise control over the wrongful acts complained of herein, as well as  
7 the contents of the various public statements issued by Unity.

8                   **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

9           74. In committing the wrongful acts alleged herein, the Individual Defendants have pursued,  
10 or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired  
11 with one another in furtherance of their wrongdoing. The Individual Defendants caused the Company to  
12 conceal the true facts as alleged herein. The Individual Defendants further aided and abetted and/or  
13 assisted each other in breaching their respective duties.

14           75. The purpose and effect of the conspiracy, common enterprise, and/or common course of  
15 conduct was, among other things, to facilitate and disguise the Individual Defendants' violations of law,  
16 including breaches of fiduciary duty, waste of corporate assets, unjust enrichment, and violations of the  
17 Exchange Act.

18           76. The Individual Defendants accomplished their conspiracy, common enterprise, and/or  
19 common course of conduct by causing the Company purposefully, recklessly, or negligently to conceal  
20 material facts, fail to correct such misrepresentations, and violate applicable laws. In furtherance of this  
21 plan, conspiracy, and course of conduct, the Individual Defendants collectively and individually took the  
22 actions set forth herein. Because the actions described herein occurred under the authority of the Board,  
23 each of the Individual Defendants who was a director of Unity was a direct, necessary, and substantial  
24 participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

25           77. Each of the Individual Defendants aided and abetted and rendered substantial assistance in  
26 the wrongs complained of herein. In taking such actions to substantially assist the commission of the  
27 wrongdoing complained of herein, each of the Individual Defendants acted with actual or constructive  
28

knowledge of the primary wrongdoing, either took direct part in, or substantially assisted the accomplishment of that wrongdoing, and was or should have been aware of their overall contribution to and furtherance of the wrongdoing.

78. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Unity and was at all times acting within the course and scope of such agency.

### **UNITY'S CODE OF CONDUCT AND CORPORATE GOVERNANCE**

#### ***Code of Conduct***

79. The Code of Conduct's "Message from the CEO" instructs, in relevant part: "The way we conduct ourselves is how we put Unity's values into practice, which is built around the recognition that everything we do in connection with our work at Unity will be, and should be, measured against the highest possible standards of ethics and business conduct."

80. Under the heading "Business Records," the Code of Conduct instructs, in relevant part:

It is essential to Unity's business that we keep and maintain full, fair, accurate, timely, and understandable business records. This requirement applies to all types of business records, including but not limited to financial records or disclosures (such as those prepared under Unity's Global Travel, Gift and Entertainment Expense Policy). The integrity of our records and public disclosure depends upon the validity, accuracy, and completeness of the information supporting the entries to our books of account. Therefore, our corporate and business records should be completed accurately and honestly. The making of false or misleading entries is strictly prohibited (e.g., including submitting false expense claims, forging, falsifying, or tampering with company documents or records of any kind).

As a Unity employee or representative, you must:

- Refrain from taking any action to intentionally cause inaccuracies in a business record;
- Ensure records you create are complete and do not misrepresent any material facts;
- Follow Unity policies and procedures on financial reporting where applicable;
- Never commit Unity to legal obligations that exceed the scope of your authority;
- Ensure that your expenses are reasonable, legitimate, and properly recorded; and
- Submit accurate certification statements about matters under your purview when requested by Legal Compliance.

Our records serve as a basis for managing our business and are important in meeting our obligations to customers, suppliers, creditors, employees, and others. We also rely upon our accounting and other business and corporate records in preparing publicly-filed reports. Securities laws require that these reports provide full, fair, accurate, timely, and understandable disclosure, and fairly present our financial condition and results of

operations. Employees who contribute in any way in preparing or verifying these reports should take all reasonable efforts to ensure that our financial disclosure is complete, accurate, and transparent.

### *Audit Committee Charter*

81. The Charter of the Audit Committee of the Board (the “Audit Committee Charter”) also entrusts the Individual Defendants on the Audit Committee with additional responsibilities.

82. Per the Audit Committee Charter, the purpose of the Audit Committee is to assist the Board in overseeing:

- the Company’s accounting and financial reporting processes and internal controls as well as the audit and integrity of the Company’s financial statements;
- the qualifications, independence and performance of the Company’s independent auditor;
- the design and implementation of the Company’s internal audit function;
- the Company’s compliance with applicable law (including U.S. federal securities laws and other legal and regulatory requirements); and
- risk assessment and risk management pertaining to the financial, accounting, tax, and data privacy and cybersecurity matters of the Company.

83. Under the heading “Responsibilities,” the Audit Committee Charter instructs the following, in relevant part:

**5. Review Financial Statements.** The Audit Committee shall review and discuss the following with management and the independent auditor, as applicable:

- the scope and timing of the annual audit of the Company’s financial statements;
- the Company’s annual audited and quarterly financial statements and annual and quarterly reports on Form 10-K and 10-Q, including the disclosures in “Management’s Discussion and Analysis of Financial Condition and Results of Operations”;
- the results of the independent audit and the quarterly reviews, and the independent auditor’s opinion on the annual financial statements;
- the applicable reports and certifications regarding internal control over financial reporting and disclosure controls and procedures;
- major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company’s selection or application of accounting principles;
- analyses prepared by management or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements;
- the effect of regulatory and accounting initiatives on the Company’s financial statements;
- any significant changes required or taken in the audit plan as a result of any material control deficiency;



- any problems or difficulties the independent auditor encountered in the course of its audit work, including any restrictions on the scope of the auditor's activities or on access to requested information, and management's response; and
- any significant disagreements between management and the independent auditor.

**6. Audited Financial Information; Audit Committee Report.** The Audit Committee shall recommend that the audited financial statements be included in the Company's annual reports on Form 10-K and shall prepare the report of the Audit Committee that SEC rules require to be included in the Company's annual proxy statement.

\* \* \*

**8. Earnings Press Releases and Earnings Guidance.** The Audit Committee shall review earnings press releases, as well as financial information and earnings guidance provided to the public, analysts and ratings agencies. To the extent practicable, the Audit Committee will review in advance the script for any earnings or finance-related conference calls to be held for the benefit of the public, analysts and ratings agencies.

**9. Internal Controls.** The Audit Committee shall review and discuss with management and the independent auditor the adequacy and effectiveness of the Company's internal controls, including any changes, significant deficiencies or material weaknesses in those controls reported by the independent auditor or management, any special audit steps adopted in light of significant control deficiencies, and any fraud, whether or not material, that involves management or other Company employees who have a significant role in the Company's internal controls.

**10. Disclosure Controls and Procedures.** The Audit Committee shall review and discuss the adequacy and effectiveness of the Company's disclosure controls and procedures.

\* \* \*

**12. Legal and Regulatory Compliance.** The Audit Committee shall review and discuss with management and the independent auditor (i) the overall adequacy and effectiveness of the Company's legal, regulatory and ethical compliance programs, including the Company's Code of Business Conduct and Ethics, compliance with the Foreign Corrupt Practices Act and foreign anticorruption laws, and compliance with export control regulations and (ii) reports regarding compliance with applicable laws, regulations and internal compliance programs, in each case to the extent such programs, laws or regulations pertain to financial, accounting and/or tax matters of the Company. The Audit Committee shall discuss with management and the independent auditor any correspondence with regulators or governmental agencies and any published reports that raise material issues regarding the Company's financial statements or accounting policies. The Audit Committee shall

discuss with the Company's general counsel legal matters that may have a material impact on the financial statements or the Company's compliance procedures that pertain to financial, accounting, investment or tax matters of the Company.

\* \* \*

**14. Risks.** The Audit Committee shall review and discuss with management, the internal auditors, if applicable, and the independent auditor the Company's major financial risk exposures and the steps management has taken to monitor and control those exposures, including the Company's guidelines and policies with respect to risk assessment and risk management pertaining to: financial, accounting, investment, tax matters, data privacy and cybersecurity matters, and anti-fraud measures. In addition, the Audit Committee will review the Company's risk management framework and programs, overall risk profile and risk exposures with the Board.

84. In violation of the Code of Conduct and the Company's corporate governance documents, the Individual Defendants conducted little, if any, oversight of the Company's engagement in the Individual Defendants' scheme to issue materially false and misleading statements to the public and to facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, waste of corporate assets, unjust enrichment, violations of the Exchange Act, and the aiding and abetting thereof. Also in violation of the Code of Conduct, the Individual Defendants failed to maintain full, fair, and accurate business records, ensure the complete, accurate, and transparent disclosure of the Company's financial condition, and conduct affairs in accordance with the highest possible standards of ethics and business conduct. In violation of the Audit Committee Charter, the Individual Defendants on the Audit Committee failed to fulfill their responsibilities in overseeing, *inter alia*, the Company's financial reporting processes and internal controls, the Company's compliance with applicable law, including U.S. federal securities laws and other legal and regulatory requirements, and risk assessment and risk management pertaining to the financial matters of the Company.

### **THE INDIVIDUAL DEFENDANTS' MISCONDUCT**

#### **Background**

85. Unity is a San Francisco-based, video game software development company. Through the Company's Create Solutions and Operate Solutions segments, customers are given the tools to create, run, and monetize their content across a variety of platforms.

86. Audience Pinpointer, one of the Company's purported user acquisition tools, generates a real-time valuation of each user at the moment of an ad request, enabling customers to monetize ads by targeting the right audience for their games or applications. After Apple implemented changes to its privacy controls in 2021, Audience Pinpointer experienced a surge in growth due to advertisers viewing the tool as a workaround to such changes.

87. Although the Company has experienced rapid growth in recent years, reporting \$1.1 billion, \$772.4 million, and \$541.8 million in the years ended December 31, 2021, 2020, and 2019, respectively, the Company saw its stock plummet 37% following its May 10, 2022 disclosure of its first quarter 2022 financial results as well as the existence of two technical issues affecting Operate Solutions' business.

88. In light of these issues, which were estimated to result in \$110 million in losses to the Company in 2022, the Company lowered its guidance for the full year ending December 31, 2022.

### **False and Misleading Statements**

#### ***March 5, 2021 Annual Report***

89. On March 5, 2021, the Company filed its annual report for the fiscal year ended December 31, 2020 with the SEC on Form 10-K (the "2020 10-K"). It was signed by Defendants Riccitiello, Jabal, Botha, Durban, Helgason, Henry, Schmidt, Schuler, Sisco, and Visoso and contained certifications signed by Defendants Riccitiello and Jabal pursuant to Rule 13a-14(a) and 15d-14(a) under the Exchange Act and the Sarbanes-Oxley Act of 2002 ("SOX") attesting to the accuracy of the 2020 10-K, the disclosure of any material changes to the Company's internal controls, and the disclosure of any fraud committed by the Company, its officers, or its directors.

90. Under the heading "Overview," the 2020 10-K stated the following, in relevant part:

Unity is the world's leading platform for creating and operating interactive, real-time 3D content. We believe the world is a better place with more creators in it. Creators, ranging from game developers to artists, architects, automotive designers, filmmakers, and others, use Unity to make their imaginations come to life.

Our platform provides a comprehensive set of software solutions to create, run and monetize interactive, real-time 2D and 3D content for mobile phones, tablets, PCs, consoles, and augmented and virtual reality devices. In the fourth quarter of 2020, we had,

1 on average, approximately 2.7 billion monthly active end users who consumed content  
2 created or operated with our solutions. The applications developed by these creators were  
3 downloaded, on average, five billion times per month in 2020.

4 Content built on the Unity platform offers end-users a fundamentally more engaging and  
5 immersive experience than traditional static content. Content made with Unity is  
6 interactive, allowing end-users to connect with the content and with one another. Content  
7 made with Unity is real-time, allowing it to instantly adapt to end-user behavior and  
8 feedback. Content made with Unity allows graphics to be expressed with 3D shape and  
9 depth, permitting multiple viewing angles, and enabling augmented and virtual reality.

10 Real-time is not just a part of the end-user experience. Building content on Unity offers  
11 creators significant advantages in development compared to traditional content creation  
12 tools. Creators can visualize and iterate on their 2D and 3D creations in real-time and  
13 collaborate with each other to edit content simultaneously.

14 \* \* \*

15 Unity has built its reputation in gaming, and our scale and reach in this industry are  
16 significant. We estimate that in the fourth quarter of 2020, 71% of the top 1,000 mobile  
17 games were made with Unity. Unity's platform helps game developers—from the largest  
18 publishers in the world with teams of hundreds, to mid-sized, small and independent  
19 publishers, to individual creators—build and operate high quality games, rapidly and  
20 efficiently. Unity games can be built once and deployed and operated across more than 20  
21 platforms, including Windows, Mac, iOS, Android, PlayStation, Xbox, Nintendo Switch,  
22 and the leading augmented and virtual reality platforms, among others. As gaming has  
23 proliferated, the business models for content have evolved beyond one-time purchases to  
24 include advertising and in-app purchases. Unity enables these new business models by  
25 providing creators with the solutions they need to easily run and monetize their content.

26 \* \* \*

27 Our platform consists of two distinct, but connected and synergistic, sets of solutions. Our  
28 Create Solutions are used by content creators—developers, artists, designers, engineers,  
and architects—to create interactive, real-time 2D and 3D content. Our Operate Solutions  
offer customers the ability to grow and engage their end-user base, as well as run and  
monetize their content with the goal of optimizing end-user acquisition and operational  
costs while increasing the lifetime value of their end-users.

29 \* \* \*

30 We have experienced rapid growth. Our revenue for the years ended December 31, 2020,  
31 2019, and 2018 was \$772.4 million, \$541.8 million, and \$380.8 million, respectively,  
32 representing year-over-year growth of 43% and 42%, respectively.

33 91. Under the heading "Our Solution," the 2020 10-K stated the following:

1 Unity is the world's leading platform for creating and operating interactive, real-time 3D  
2 content. Our platform includes our Create Solutions and Operate Solutions, which  
3 complement each other and together provide a comprehensive set of solutions that enable  
4 our customers to create, run and monetize their content across a broad range of third-party  
5 content distribution platforms.

6 Our Create Solutions are used to create, edit, run and deploy real-time 2D, as well as high  
7 definition, real-time 3D content. Content can be created once and deployed to more than  
8 20 platforms, including Windows, Mac, iOS, Android, PlayStation, Xbox, Nintendo  
9 Switch, and the leading augmented and virtual reality platforms, among others. Our  
10 products include custom scripting tools and a high-definition render pipeline for  
11 developers; graphics, animation and audio tools for artists; and navigation, networking and  
12 user interface tools for designers. Delivered as a modular application architecture, creators  
13 can leverage our products to easily create, edit, and iterate interactive, real-time 3D content.

14 Our Operate Solutions offer customers the ability to grow and engage their user bases, and  
15 to run and monetize their content—from 2D puzzle games to multiplayer, multi-platform  
16 games, or other 3D interactive content—irrespective of whether the content was created in  
17 Unity. Our monetization products, Unity Ads and Unity IAP (In-App Purchases), help  
18 developers to maximize the revenue potential of their content. We help our customers to  
19 maximize the lifetime value of their end users, while optimizing their end-user acquisition  
20 and operational costs. Our end-user engagement products, such as deltaDNA, provide  
21 developers with the capability to perform deep analytics to optimize end-user engagement  
22 and behavior. Finally, we also offer solutions to simplify the delivery of content and  
23 provide back-end management, such as Multiplay for multiplayer hosting in games, or  
24 Vivox to enable player-to-player communications in games.

25 92. Under the heading "Our Competitive Strengths," the 2020 10-K stated the following about  
26 the Company's platform, in relevant part:

27 Our core competitive is the breadth and depth of our platform. We offer a comprehensive  
28 set of solutions to create, run and monetize real-time 3D games and applications. Creators  
can onboard through any of our solutions and leverage our platform to serve their needs at  
every stage of growth. To help our creators succeed, we provide access to comprehensive  
learning resources and guided onboarding to our extensive community. As a result of the  
strength of our platform, in the fourth quarter of 2020, we had, on average, approximately  
2.7 billion monthly active end users who consumed content created or operated with our  
solutions on over 20 platforms, up 63% from a year earlier. We saw an average of more  
than 13,000 new projects each day in 2020.

93. Under the heading "Our Products," the 2020 10-K stated the following about Operate  
Solutions, in relevant part:

Our user acquisition products enable advertisers to efficiently acquire new end-users at  
scale. They operate within our monetization ecosystem, which reached over 2.6 billion  
monthly active end users as of December 31, 2020, making it one of the largest global user  
bases for advertisers. Our focus and strength are in pay-for-performance end-user

acquisition, where advertisers pay us based on a tangible outcome or set goal, such as an install, rather than on a cost per impression basis. As a result, a large number of our advertisers have open spending limits with us as they can clearly measure the positive return on their spend.

***April 28, 2021 Proxy Statement***

94. On April 28, 2021, the Company filed a proxy statement on Schedule 14A with the SEC (the “2021 Proxy Statement”). Defendants Riccitiello, Botha, Durban, Helgason, Henry, Schmidt, Schuler, and Sisco solicited the 2021 Proxy Statement filed pursuant to Section 14(a) of the Exchange Act, which contained material misstatements and omissions.<sup>1</sup>

95. The 2021 Proxy Statement called for Company shareholders to vote to, *inter alia*: (1) elect Defendants Riccitiello, Botha, and Helgason to the Board; and (2) ratify the appointment of Ernst & Young LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2021.

96. Under the heading “Role of the Board in Risk Oversight,” the 2021 Proxy Statement stated the following:

One of the Board’s key functions is informed oversight of our risk management process. Our Board does not have a standing risk management committee, but rather administers this oversight function directly through the Board as a whole, as well as through various Board standing committees that address risks inherent in their respective areas of oversight. In particular, our Board is responsible for monitoring and assessing strategic risk exposure, including a determination of the nature and level of risk appropriate for the Company. Our Audit Committee has the responsibility to consider and discuss our major financial risk exposures and the steps our management has taken to monitor and control these exposures, including guidelines and policies to govern the process by which risk assessment and management is undertaken. Our Audit Committee also monitors compliance with legal and regulatory requirements, in addition to oversight of the performance of our internal audit function. Our Audit Committee responsibilities also include oversight of cybersecurity risk management, and, to that end, the committee typically meets quarterly with both IT and business personnel responsible for cybersecurity risk management and receives periodic reports from the head of cybersecurity risk management, as well as incidental reports as matters arise. Our Nominating and Corporate Governance Committee monitors the effectiveness of our corporate governance guidelines, including whether they are successful in preventing illegal or improper liability-creating conduct. Our Compensation

<sup>1</sup> Plaintiff’s allegations with respect to the misleading statements in the 2021 Proxy Statement are based solely on negligence; they are not based on any allegation of reckless or knowing conduct by or on behalf of the Individual Defendants, and they do not allege, and do not sound in, fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to these allegations and related claims.



1 Committee assesses and monitors whether any of our compensation policies and programs  
2 has the potential to encourage excessive risk-taking.

3 97. The 2021 Proxy Statement also detailed the principal functions of the Audit Committee,  
4 which at that time consisted of Defendants Botha and Sisco. These functions included the following:

- 5 • helping the Board oversee the Company's corporate accounting and financial  
6 reporting processes;
- 7 • managing the selection, engagement, qualifications, independence, and  
8 performance of a qualified firm to serve as the Company's independent registered  
9 public accounting firm to audit the Company's financial statements and the  
10 effectiveness of its internal control over financial reporting, when required;
- 11 • discussing the scope and results of the audit with the independent registered public  
12 accounting firm, and reviewing, with management and the independent  
13 accountants, the Company's interim and year end operating results;
- 14 • developing procedures for employees to submit concerns anonymously about  
15 questionable accounting or audit matters;
- 16 • reviewing related party transactions;
- 17 • approving or, as permitted, pre-approving, audit and permissible non-audit services  
18 to be performed by the independent registered public accounting firm; and
- 19 • preparing the Audit Committee report that the SEC requires in the Company's  
20 annual proxy statement.

21 98. With respect to the Company's Code of Conduct, the 2021 Proxy Statement stated:

22 We have adopted the Unity Software Inc. Global Code of Conduct and Ethics that applies  
23 to all officers, directors and employees. The Global Code of Conduct and Ethics is  
24 available on our website at [investors.unity.com](https://investors.unity.com). If we make any substantive amendments  
25 to the Global Code of Conduct and Ethics or grant any waiver from a provision of it to any  
26 executive officer or director, we will promptly disclose the nature of the amendment or  
27 waiver on our website.

28 99. The above statements in the 2021 Proxy Statement were false and misleading because they  
failed to disclose that: (1) contrary to the 2021 Proxy Statement's description of the Board's risk oversight  
function, the Board failed in the administration of its risk oversight function, resulting in the Individual  
Defendants' misconduct and breach of their fiduciary duties; (2) contrary to the 2021 Proxy Statement's  
description of the Audit Committee's responsibilities, the Audit Committee was not adequately exercising  
these functions, was causing or permitting Unity to issue false and misleading statements, and the  
Individual Defendants on the Board and the Audit Committee at that time were breaching their fiduciary



1 duties; and (3) although the Company claimed the Code of Conduct applied to all officers and directors  
 2 and that it would disclose any waivers of the policy, the Individual Defendants violated the Code of  
 3 Conduct either without waivers or without such waivers being disclosed.

4 100. The above statements in the 2021 Proxy Statement were false and misleading because they  
 5 also failed to disclose, *inter alia*, that: (1) technical issues with the Company's monetization platform  
 6 caused a data quality issue as well as problems with the accuracy of the Company's Audience Pinpointer  
 7 tool; (2) the drop in the accuracy of the Audience Pinpointer tool led to a drop in the usage of the tool,  
 8 impacting the Company's monetization business; (3) due to the foregoing, the Company's revenues were  
 9 likely to be negatively affected; (4) accordingly, a reduction in the Company's guidance for the full year  
 10 ending December 31, 2022 was to be expected; (5) as a result, the Company had overstated its prospects  
 11 for 2022; and (6) the Company failed to maintain internal controls. As a result of the foregoing, the  
 12 Company's public statements were materially false and misleading at all relevant times.

13 101. As a result of the material misstatements and omissions contained in the 2021 Proxy  
 14 Statement, Company shareholders voted, *inter alia*, to elect Defendants Riccitiello, Botha, and Helgason  
 15 to the Board, which allowed them to continue breaching their fiduciary duties to the Company.

16 ***May 11, 2021 Press Release and Earnings Call***

17 102. On May 11, 2021, the Company issued a press release announcing its first quarter 2021  
 18 financial results. The press release contained the following quote from Defendant Riccitiello:

19 Our first quarter results are reflective of the powerful transition from linear 2D to real-time  
 20 3D, which is one of the most important changes in how people interact with technology . .  
 21 . . We believe that real-time 3D will continue to grow at an accelerated pace and achieve  
 massive scale.

22 103. The May 11, 2021 press release also contained the following quote from Defendant Visoso:  
 23 Execution in the first quarter was very strong with revenue of \$234.8 million, an increase  
 24 of 41% from last year. We are encouraged by the growth of our customers contributing  
 25 more than \$100K of trailing twelve-month revenue and the healthy dollar-based net  
 expansion rate during the first quarter . . . We continue to invest strategically in R&D and  
 vertical expansion to enable Unity to lead the transition to real-time 3D.

26 104. That same day, the Company held an earnings call to discuss its first quarter 2021 financial  
 27 results. On the call, Defendant Riccitiello stated, in relevant part:  
 28

1 At Unity, we remain focused on our North Star, our guiding principle, which is that we  
2 believe the world is a better place with more creators. Our focus, as always, is to enable  
3 these creators and to help them succeed.

4 Our financial results reflect the power of this theme. In Q1, we grew revenue 41% year  
5 over year to \$235 million. This is the tenth consecutive quarter of 30%-plus revenue  
6 growth. We believe the transition from linear 2D to real-time 3D is a transformative theme  
7 and one of the most important changes on how creators will tell their stories and bring their  
8 visions to life.

9 It's also one of the most important changes in how people interact with technology in many  
10 years. We support our customers on many platforms and in numerous geographies, and  
11 today are the only high-scale solution for creating and operating real-time 3D globally. We  
12 believe it's inevitable that a large portion of the world's creators will, over time, become  
13 primarily real-time 3D creators. The role of interactivity through 3D in real time is so much  
14 greater than with alternative forms of media.

15 \* \* \*

16 Now what do I mean when I say scale with a creator throughout their career? Well, we  
17 believe that our commitment to R&D competitively differentiates us from less  
18 sophisticated platforms that aspire to catch up with us in terms of technology or market  
19 share. For example, with Unity, you only write once and you can publish anywhere. We  
20 build our editors so a full range of users, from creators to advanced developers, can build  
21 real-time 3D applications. This means you could start with visual scripting, move to C#  
22 programming, and for more advanced developers, they can work directly with Unity's  
23 source code, if needed.

24 With these on-ramps to Unity, we enable creators to develop and operate many application  
25 types from games, to car configurators who run high-scale AI simulation. It's not easy to  
26 make the complexity of this easy.

27 105. Also on the call, in response to a question from an analyst regarding emerging competitive  
28 marketing or digital advertising marketplaces, Defendant Riccitiello stated, in relevant part:

It's on the basis of being competitive in the marketplace that we're going to succeed. When  
I was answering the last question, I said we increase our take rate by increasing the value  
we add. We're constantly focused on that.

Short term, we can always maybe eke out a few dollars by messing around with pricing or  
messing around with other things that are hard to lap. Value add is easy to scale. And that's  
what we're investing in. And I'm highly confident in our monetization platform as part of  
Operate is going to continue to win.

***August 10, 2021 Press Release and Earnings Call***

106. On August 10, 2021, the Company issued a press release announcing its second quarter 2021 financial results. The press release contained the following quote from Defendant Riccitiello:

At Unity, our goal is to provide creators with the best tools to succeed as RT3D creators . . . . Unity is designed to enable creators to build anything digital and to instantly deploy their work across dozens of platform types and devices, which is to make participating in building the metaverse accessible to all creators.

107. The press release also contained the following quote from Defendant Visoso:

We had another consecutive strong quarter, with revenue for the quarter at \$273.6 million, up 48% year-on-year as we added new customers and expanded our business with existing customers . . . . While our strong performance is broad based, we are particularly proud of the performance from our Operate Solutions group that expanded market share in a tough environment. Our strong performance gives us confidence to raise guidance for the year, again.

108. That same day, the Company held an earnings call to discuss its second quarter 2021 financial results. On the call, Defendant Riccitiello stated, in relevant part:

Unity reported a 48% year-over-year increase in revenue to \$274 million for the quarter. This quarter was the first in Unity's history as we crossed a \$1 billion revenue run rate. We also raised our revenue guidance for the year by another \$45 million to a range between \$1.045 billion and \$1.060 billion.

We generated strong growth across all our product lines and geographies with important growth in both Operate and Create. Within Operate, both monetization and multiplayer services posted strong growth. And within Create, we saw strong growth both in games and non-game verticals.

\* \* \*

Our Operations Solutions help developers solve this vision. We offer an end-to-end platform for content creators to deliver the best player experience and build robust and profitable businesses. We provide a growing suite of services that content creators can use to acquire new users, optimize user engagement and LTV by our monetization platform.

***November 9, 2021 Press Release and Earnings Call***

109. On November 9, 2021, the Company issued a press release announcing its third quarter 2021 financial results. The press release disclosed “third quarter 2021 revenue of \$286.3 million, which

1 is up 43% from the same period in 2020 and ahead of guidance. The company is increasing full year  
 2 revenue guidance.”

3  
 4 110. The November 9, 2021 press release also contained the following quote from Defendant  
 5 Riccitiello:

6 Unity’s strong performance this quarter was driven by innovation in data science, vertical  
 7 growth and making significant strides in bringing RT3D technologies and tools to as many  
 8 creators and artists as possible . . . . And today we are proud to announce our intentions to  
 9 acquire Weta Digital as we aim to bring their dozens of tools and assets to creators around  
 10 the world. This sends a powerful message: all types of creators and digital artists can turn  
 11 to Unity to create rich, interactive content and build experiences regardless of industry.

12 111. The press release further contained the following quote from Defendant Visoso:

13 We delivered another strong quarter in Q3 2021 with \$286 million in revenue, continuing  
 14 to add new customers and expanding our business within existing customers. The strong  
 15 momentum gives us the confidence to raise our revenue growth guidance to 40% for the  
 16 full year . . . . Bringing Weta Digital into the Unity family will materially advance our  
 17 relevance with artists, and increase our addressable market, setting us up well for our long  
 18 term growth prospects.

19 112. That same day, the Company held an earnings call to discuss its third quarter 2021 financial  
 20 results. On the call, Defendant Riccitiello stated, in relevant part:

21 We are really happy with our third quarter results, and we have great news to share. We  
 22 reported another strong quarter with results well above our expectations. We delivered 43%  
 23 revenue growth as revenue had a record \$286 million in the quarter.

24 We continue to invest to drive future growth, resulting in a non-GAAP operating margin  
 25 of a negative 4%, flat to the same quarter last year. Since we went public in September of  
 26 last year, our revenue growth has averaged 45%. We're encouraged by the execution across  
 27 all of our business lines and geographies. And as you'll hear later from Luis, we are raising  
 28 our revenue guidance again this quarter.

113. Also on the call, in response to a question from an analyst regarding the “slight uptick” in  
 sequential growth in third quarter 2021, Defendant Riccitiello stated, in relevant part:

So on the Operate side and particularly monetization, I'd be remiss if I didn't point out that  
 outside of monetization, the rest of our Operate stack is working extremely well. So it's  
 across the board right, inside of our Operate portfolio. So we're gaining scale everywhere.  
 So we feel really good about our business there.

But specifically to Operate, I think topical right now and challenging for investors is you  
 see a lot of quarterly results and some companies pop up as a winner and some companies

haven't popped up as a winner post the roll-through of the IDFA changes introduced by Apple. Something I've been saying for a very long time is that Unity benefits from a very unique data set, driven by over 3 billion people, MAUs in our analytics platform and hundreds of millions on our IAP platform. So I'm going to introduce something that I think probably most of you think is pretty obvious, but I'm going to emphasize it again. Most ad networks, their business is based on the identity, the specific identity of the user interacting with the application.

***February 3, 2022 Press Release and Earnings Call***

114. On February 3, 2022, the Company issued a press release announcing its financial results for the fourth quarter and fiscal year ended December 31, 2021. The press release stated the following, in relevant part:

Unity . . . today announced fourth quarter 2021 revenue of \$315.9 million, which is up 43% from the same period in 2020 and ahead of guidance. Additionally, the company announced full-year 2021 revenue of \$1.1 billion, a growth of 44% year-over-year.

\* \* \*

Since becoming a public company in September 2020, Unity has averaged 43% revenue growth. Customers contributing \$100,000 or more in revenue in the trailing 12 months increased 33%, from 793 as of December 31, 2020 to 1,052 as of December 31, 2021.

115. The February 3, 2022 press release also contained the following quote from Defendant Riccitiello:

Unity's strong fourth-quarter and full-year results were driven by exceptional execution and innovation by the Unity teams . . . We believe that the transition from linear 2D to interactive real-time 3D, presents a massive growth opportunity for the next decades. These are strong tailwinds that help us drive growth for years to come.

116. The press release further contained the following quote from Defendant Visoso:

We are encouraged by our performance in 2021 with strong results across Create and Operate Solutions . . . The business momentum coupled with the quality of our innovation plans gives us confidence to guide to a revenue growth range of 34% to 36% in 2022 as we continue to improve margins.

117. That same day, the Company held an earnings call to discuss its financial results for the fourth quarter and fiscal year ended December 31, 2021. On the call, Defendant Riccitiello stated, in relevant part:

We delivered another really strong quarter ending in December to close out '21 with great momentum. For the quarter, revenue grew 43% year over year to \$316 million, and our

1 non-GAAP operating margin was minus 3.8%, expanding 530 basis points from a year  
2 earlier.

3 \* \* \*

4 These results have been and will continue to be driven by excellence in execution by the  
5 Unity team.

6 We have built our business on a strong foundation based on very healthy customer metrics  
7 and structural economics. We entered 2022 with momentum across both Create and  
8 Operate, which gives us confidence in our outlook. For the year, we expect to grow revenue  
to be between \$1.485 billion and \$1.505 billion, which represents growth between 34%  
and 36% from 2021.

9 \* \* \*

10 The Unity platform is designed to help creators through the entire life cycle runtime  
11 application from ideation to launch to monetization, hosting an ongoing analytics to drive  
12 growth. So point number two, we think our leadership position is strong and we're growing  
it, and we continue to do that.

13 \* \* \*

14 We believe that we have a unique platform that will endure the test of time. And as I've  
15 said earlier, the process of building our platform is at the very center of our strategic  
16 process, where we add value to our platform while increasing our total addressable market.

17 \* \* \*

18 Unity is an innovation machine.

19 Monetization is a great example. We entered this business in 2014 and have not stopped  
20 innovating ever since. We hire the best and brightest product leaders, engineers, data  
21 scientists and focus on improving player experience. We operate with the developers'  
interest in mind and ensure our products contribute to their long-term success.

22 \* \* \*

23 Now I'm proud of what we've achieved so far at Unity, and I'm excited about the future  
24 that we can and will create. We are executing with excellence in a large and growing market  
that we are strategically expanding through internal innovation and acquisition.

25 We have a defensible platform that has significant value to our customers and keeps on  
26 getting better.

27 118. Also on the call, Defendant Visoso stated the following, in relevant part:  
28

We also saw strong performance from our sophisticated analytics tools and products, such as Audience Pinpointer, that deliver strong return on investment to our customers without manual guesswork.

To win in a highly competitive market, we're constantly innovating, optimizing our machine learning models, improving our campaign and performance models, and generating actionable insights for our customers' campaigns and enabling them to make informed decisions. As a result, we estimate that our monetization business has been over each of the last five years, including 2021, consistently growing about twice as fast as the market. In addition, we're focused on providing infrastructure for synchronous multiplayer experiences and community service for vibrant social interactions.

***February 22, 2022 Annual Report***

119. On February 22, 2022, the Company filed its annual report for the fiscal year ended December 31, 2021 with the SEC on Form 10-K (the "2021 10-K"). It was signed by Defendants Riccitiello, Visoso, Botha, Durban, Helgason, Henry, Schmidt, Schuler, Sisco, and Smith and contained certifications signed by Defendants Riccitiello and Visoso pursuant to Rule 13a-14(a) and 15d-14(a) under the Exchange Act and SOX attesting to the accuracy of the 2021 10-K, the disclosure of any material changes to the Company's internal controls, and the disclosure of any fraud committed by the Company, its officers, or its directors. The 2021 10-K's descriptions of the Company's business and operations were substantially similar to the 2020 10-K's descriptions set forth in ¶¶ 95-98.

120. The statements referenced in ¶¶ 89-93 and ¶¶ 102-119 herein were materially false and misleading and failed to disclose material facts necessary to make the statements made not false and misleading. Specifically, the Individual Defendants failed to disclose, *inter alia*, that: (1) technical issues with the Company's monetization platform caused a data quality issue as well as problems with the accuracy of the Company's Audience Pinpointer tool; (2) the drop in the accuracy of the Audience Pinpointer tool led to a drop in the usage of the tool, impacting the Company's monetization business; (3) due to the foregoing, the Company's revenues were likely to be negatively affected; (4) accordingly, a reduction in the Company's guidance for the full year ending December 31, 2022 was to be expected; (5) as a result, the Company had overstated its prospects for 2022; and (6) the Company failed to maintain internal controls. As a result of the foregoing, the Company's public statements were materially false and misleading at all relevant times.



***April 20, 2022 Proxy Statement***

121. On April 20, 2022, the Company filed the 2022 Proxy Statement with the SEC. Defendants Riccitiello, Botha, Durban, Helgason, Henry, Schmidt, Schuler, Sisco, and Smith and nonparty Michelle K. Lee (“Lee”) solicited the 2022 Proxy Statement filed pursuant to Section 14(a) of the Exchange Act, which contained material misstatements and omissions.<sup>2</sup>

122. The 2022 Proxy Statement called for Company shareholders to vote to, *inter alia*: (1) elect Defendants Durban, Schuler, and Sisco to the Board; (2) ratify the appointment of Ernst & Young LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2022; and (3) approve, on an advisory basis, the compensation of the Company’s named executive officers.

123. Under the heading “Role of the Board in Risk Oversight,” the 2022 Proxy Statement stated the following:

One of the Board’s key functions is informed oversight of our risk management process. Our Board does not have a standing risk management committee, but rather administers this oversight function directly through the Board as a whole, as well as through various Board standing committees that address risks inherent in their respective areas of oversight. In particular, our Board is responsible for monitoring and assessing strategic risk exposure, including a determination of the nature and level of risk appropriate for the Company. Our Audit Committee has the responsibility to consider and discuss our major financial risk exposures and the steps our management has taken to monitor and control these exposures, including guidelines and policies to govern the process by which risk assessment and management is undertaken. Our Audit Committee also monitors compliance with legal and regulatory requirements, in addition to oversight of the performance of our internal audit function. Our Audit Committee responsibilities also include oversight of cybersecurity risk management, and, to that end, the committee typically meets quarterly with both IT and business personnel responsible for cybersecurity risk management and receives periodic reports from the head of cybersecurity risk management, as well as incidental reports as matters arise. Our Nominating and Corporate Governance Committee monitors the effectiveness of our corporate governance guidelines, including whether they are successful in preventing illegal or improper liability-creating conduct. Our Nominating and Corporate Governance Committee also monitors our environmental and social impact

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<sup>2</sup> Plaintiff’s allegations with respect to the misleading statements in the 2021 Proxy Statement are based solely on negligence; they are not based on any allegation of reckless or knowing conduct by or on behalf of the Individual Defendants, and they do not allege, and do not sound in, fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to these allegations and related claims.

1 initiatives. Our Compensation Committee assesses and monitors whether any of our  
2 compensation policies and programs has the potential to encourage excessive risk-taking.

3 124. The 2022 Proxy Statement also detailed the principal functions of the Audit Committee,  
4 which at that time consisted of Defendants Botha and Sisco and nonparty Lee. These functions included  
5 the following:

- 6 • Helping the Board oversee the Company's corporate accounting and financial  
reporting processes;
- 7 • Managing the selection, engagement, qualifications, independence, and  
8 performance of a qualified firm to serve as the Company's independent registered  
9 public accounting firm to audit the Company's financial statements and the  
effectiveness of its internal control over financial reporting, when required;
- 10 • Discussing the scope and results of the audit with the independent registered public  
accounting firm, and reviewing, with management and the independent  
11 accountants, the Company's interim and year end operating results;
- 12 • Developing procedures for employees to submit concerns anonymously about  
questionable accounting or audit matters;
- 13 • Reviewing related party transactions;
- 14 • Approving or, as permitted, pre-approving, audit and permissible non-audit  
15 services to be performed by the independent registered public accounting firm; and
- 16 • Preparing the Audit Committee report that the SEC requires in the Company's  
annual proxy statement.

17 125. With respect to the Company's Code of Conduct, the 2022 Proxy Statement stated:

18 We have adopted the Unity Software Inc. Global Code of Conduct and Ethics that applies  
19 to all officers, directors and employees. The Global Code of Conduct and Ethics is  
20 available on our website at [investors.unity.com](https://investors.unity.com). If we make any substantive amendments  
21 to the Global Code of Conduct and Ethics or grant any waiver from a provision of it to any  
executive officer or director, we will promptly disclose the nature of the amendment or  
waiver on our website.

22 126. The above statements in the 2022 Proxy Statement were false and misleading because they  
23 failed to disclose that: (1) contrary to the 2022 Proxy Statement's description of the Board's risk oversight  
24 function, the Board failed in the administration of its risk oversight function, resulting in the Individual  
25 Defendants' misconduct and breach of their fiduciary duties; (2) contrary to the 2022 Proxy Statement's  
26 description of the Audit Committee's responsibilities, the Audit Committee was not adequately exercising  
27 these functions, was causing or permitting Unity to issue false and misleading statements, and the  
28

Individual Defendants on the Board and the Audit Committee at that time were breaching their fiduciary duties; and (3) although the Company claimed the Code of Conduct applied to all officers and directors and that it would disclose any waivers of the policy, the Individual Defendants violated the Code of Conduct either without waivers or without such waivers being disclosed.

127. The above statements in the 2022 Proxy Statement were false and misleading because they also failed to disclose, *inter alia*, that: (1) technical issues with the Company's monetization platform caused a data quality issue as well as problems with the accuracy of the Company's Audience Pinpointer tool; (2) the drop in the accuracy of the Audience Pinpointer tool led to a drop in the usage of the tool, impacting the Company's monetization business; (3) due to the foregoing, the Company's revenues were likely to be negatively affected; (4) accordingly, a reduction in the Company's guidance for the full year ending December 31, 2022 was to be expected; (5) as a result, the Company had overstated its prospects for 2022; and (6) the Company failed to maintain internal controls. As a result of the foregoing, the Company's public statements were materially false and misleading at all relevant times.

128. As a result of the material misstatements and omissions contained in the 2022 Proxy Statement, Company shareholders voted, *inter alia*, to: (1) elect Defendants Durban, Schuler, and Sisco to the Board, which allowed them to continue breaching their fiduciary duties to the Company; and (2) approve, on an advisory basis, the compensation of the Company's named executive officers, including Defendants Riccitiello and Visoso, who were breaching their fiduciary duties to the Company.

### **The Truth Emerges**

#### ***May 10, 2022 Press Release and Earnings Call***

129. On May 10, 2022, after markets closed, the truth emerged when the Company issued a press release announcing its first quarter 2022 financial results. The press release disclosed that the Company was lowering its guidance for the full year ending December 31, 2022, stating, in relevant part: "Unity is providing the following guidance for the second quarter and lowering guidance for the full year ending December 31, 2022 due to challenges with monetization products that we expect to impact 2022."

130. That same day, the Company held an earnings call to discuss its first quarter 2022 financial results. On the call, Defendant Riccitiello stated, in relevant part:

1 Our report today is a tale of two cities.

2 First, we experienced challenges in monetization of negatively affected revenue in  
3 February and March and more persists through the third quarter with minimal impact on  
4 the fourth. Second, we continue to perform very well in Create both with our gaming  
5 customers and with our non-game digital twins business where we saw meaningful growth,  
6 a trend we expect to continue. For the total company, revenue of \$320 million was up 36%  
7 from a year earlier and came in at the top end of our guidance range. Upside to the forecast  
8 in Create was offset by challenges in Operate's monetization business.

9 Non-GAAP operating margin of minus 7.2% improved 280 basis points from the first  
10 quarter of last year as we continued to invest in innovation to capture the very large  
11 opportunity in front of us, while improving non-GAAP operating margins.

12 I'd like to address our Operate business first. Operate started the year strong in January, but  
13 then significantly slowed down in February and March. This resulted in first-quarter  
14 revenue of \$184 million, an increase of 26% year on year. While there are external factors  
15 to consider, the Operate challenge is mostly caused by internal factors in Unity  
16 monetization in an otherwise healthy market. We see these challenges as temporary and  
17 not structural and do not expect them to impact future prospects of our business beyond  
18 2022.

19 The most succinct framing for the challenges we are facing is that we built more for growth  
20 and less for resiliency. Following years of rapid growth and working through the challenges  
21 of Apple's privacy changes, we got hit hard by two issues.

22 The first was a fault in our platform that resulted in reduced accuracy for our Audience  
23 Pinpointer tool, a revenue expensive issue given that our Pinpointer tool experienced  
24 significant growth post the IDFA changes. The second is that we lost the value of a portion  
25 of our data, training data due in part to us ingesting bad data from a large customer. We  
26 estimate the impact to our business of approximately \$110 million in 2022 with no  
27 carryover impact to 2023. Luis will provide a more granular update to our guidance in a  
28 few minutes.

131. On this news, the Company's share price plummeted \$17.83 (or 37%) from a close of  
\$48.13 per share on May 10, 2022 to a close of \$30.30 per share on May 11, 2022.

### **DAMAGES TO UNITY**

132. As a direct and proximate result of the Individual Defendants' misconduct, Unity has lost  
and expended, and will lose and expend, many millions of dollars.

133. Such expenditures include, but are not limited to, legal fees associated with the Securities  
Class Action filed against the Company and certain of its current and former officers and directors, any

1 governmental investigations, any internal investigations, and amounts paid to outside lawyers,  
2 accountants, and investigators in connection thereto.

3 134. Such losses include, but are not limited to, handsome compensation and benefits paid to  
4 the Individual Defendants who breached their fiduciary duties to the Company.

5 135. As a direct and proximate result of the Individual Defendants' conduct, Unity has also  
6 suffered and will continue to suffer a loss of reputation and goodwill, and a "liar's discount" that will  
7 plague the Company's stock in the future due to the Company's and their misrepresentations and the  
8 Individual Defendants' breaches of fiduciary duties, waste of corporate assets, unjust enrichment, and  
9 other violations of law.

#### 10 **DERIVATIVE ALLEGATIONS**

11 136. Plaintiff brings this action derivatively and for the benefit of Unity to redress injuries  
12 suffered, and to be suffered, because of the Individual Defendants' breaches of their fiduciary duties as  
13 directors and/or officers of Unity, waste of corporate assets, unjust enrichment, violations of the Exchange  
14 Act, as well as the aiding and abetting thereof, and for contribution under Sections 10(b) and 21D of the  
15 Exchange Act.

16 137. Unity is named solely as a nominal party in this action. This is not a collusive action to  
17 confer jurisdiction on this Court that it would not otherwise have.

18 138. Plaintiff is, and has continuously been at all relevant times, a shareholder of Unity. Plaintiff  
19 will adequately and fairly represent the interests of Unity in enforcing and prosecuting its rights, and, to  
20 that end, has retained competent counsel, experienced in derivative litigation, to enforce and prosecute  
21 this action.

#### 22 **DEMAND FUTILITY ALLEGATIONS**

23 139. Plaintiff incorporates by reference and realleges each and every allegation stated above as  
24 if fully set forth herein.

25 140. A pre-suit demand on the Board of Unity is futile and, therefore, excused. At the time of  
26 filing of this action, the Board consists of the following thirteen individuals: Defendants Riccitiello, Botha,  
27 Durban, Helgason, Henry, Schuler, Sisco, Schmidt, Smith (the "Director-Defendants") and nonparties  
28

1 Lee, Tomer Bar-Zeev, Shlomo Dovrat, and David Kostman (collectively with the Director-Defendants,  
2 the “Directors”). Plaintiff needs only to allege demand futility as to seven of these thirteen Directors.

3 141. Demand is excused as to all of the Director-Defendants because each of them faces,  
4 individually and collectively, a substantial likelihood of liability as a result of the schemes they engaged  
5 in knowingly or recklessly to make and/or cause the Company to make false and misleading statements  
6 and omissions of material fact, all of which renders the Director-Defendants unable to impartially  
7 investigate the charges and decide whether to pursue action against themselves and the other perpetrators  
8 of the scheme.

9 142. In complete abdication of their fiduciary duties, the Director-Defendants either knowingly  
10 or recklessly participated in making and/or causing the Company to make the materially false and  
11 misleading statements alleged herein. The fraudulent scheme was, *inter alia*, intended to make the  
12 Company appear more profitable and attractive to investors. As a result of the foregoing, the Director-  
13 Defendants breached their fiduciary duties, face a substantial likelihood of liability, are not disinterested,  
14 and demand upon them is futile, and thus excused.

15 143. Additional reasons that demand on Defendant Riccitiello is futile follow. Defendant  
16 Riccitiello has served as the Company’s President and CEO since October 2014, as Executive Chairman  
17 of the Board since June 2014, and as a Company director since November 2013. Thus, as the Company  
18 admits, he is a non-independent director. The Company provides Defendant Riccitiello with his principal  
19 occupation for which he receives handsome compensation as detailed above. As President, CEO, and  
20 Executive Chairman of the Board, Defendant Riccitiello was ultimately responsible for the many false  
21 and misleading statements and omissions that were made, including those contained in the 2020 10-K and  
22 2021 10-K, both of which he personally signed and signed SOX certifications for. He benefited from the  
23 2021 Proxy Statement, containing false and misleading statements, which led to his election to the Board  
24 and allowed him to breach his fiduciary duties to the Company. In addition, he solicited the 2022 Proxy  
25 Statement, containing false and misleading statements, which contributed to shareholders approving, on  
26 an advisory basis, his unjust compensation. Moreover, Defendant Riccitiello engaged in insider trading,  
27 selling 2,063,878 shares of Unity common stock for proceeds of approximately \$256.6 million while the  
28

1 share price of Unity's common stock was artificially inflated. As the Company's highest officer and as a  
2 trusted Company director, he conducted little, if any, oversight of the scheme to make false and misleading  
3 statements, consciously disregarded his duties to monitor such controls over reporting and engagement in  
4 the scheme, and consciously disregarded his duties to protect corporate assets. Furthermore, Defendant  
5 Riccitiello is a defendant in the Securities Class Action. For these reasons, Defendant Riccitiello breached  
6 his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus  
7 demand upon him is futile and, therefore, excused.

8 144. Additional reasons that demand on Defendant Botha is futile follow. Defendant Botha has  
9 served as a Company director since September 2009. He has received and continues to receive substantial  
10 compensation for his role as a director as described above. Defendant Botha personally signed the 2020  
11 10-K and 2021 10-K, which contained false and misleading statements and omissions. He benefited from  
12 the 2021 Proxy Statement, containing false and misleading statements, which led to his election to the  
13 Board and allowed him to breach his fiduciary duties to the Company. As a trusted Company director, he  
14 conducted little, if any, oversight of the scheme to make false and misleading statements, consciously  
15 disregarded his duties to monitor such controls over reporting and engagement in the scheme, and  
16 consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Botha  
17 breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested,  
18 and thus demand upon him is futile and, therefore, excused.

19 145. Additional reasons that demand on Defendant Durban is futile follow. Defendant Durban  
20 has served as a Company director since June 2017. He has received and continues to receive substantial  
21 compensation for his role as a director as described above. Defendant Durban personally signed the 2020  
22 10-K and 2021 10-K, which contained false and misleading statements and omissions. He benefited from  
23 the 2022 Proxy Statement, containing false and misleading statements, which led to his election to the  
24 Board and allowed him to breach his fiduciary duties to the Company. Moreover, Defendant Durban  
25 engaged in insider trading, selling 1,885,057 shares of Unity common stock for proceeds of approximately  
26 \$362.9 million while the share price of Unity's common stock was artificially inflated. As a trusted  
27 Company director, he conducted little, if any, oversight of the scheme to make false and misleading  
28



1 statements, consciously disregarded his duties to monitor such controls over reporting and engagement in  
2 the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons,  
3 Defendant Durban breached his fiduciary duties, faces a substantial likelihood of liability, is not  
4 independent or disinterested, and thus demand upon him is futile and, therefore, excused.

5 146. Additional reasons that demand on Defendant Helgason is futile follow. Defendant  
6 Helgason co-founded the Company in August 2004 and has served as a Company director since May  
7 2015. As the Company admits, he is a non-independent director. Defendant Helgason has received and  
8 continues to receive substantial compensation for his role as a director as described above. He personally  
9 signed the 2020 10-K and 2021 10-K, which contained false and misleading statements and omissions.  
10 He benefited from the 2021 Proxy Statement, containing false and misleading statements, which led to his  
11 election to the Board and allowed him to breach his fiduciary duties to the Company. Moreover, Defendant  
12 Helgason engaged in insider trading, selling 688,629 shares of Unity common stock for proceeds of  
13 approximately \$107.5 million while the share price of Unity's common stock was artificially inflated. As  
14 a trusted Company director, he conducted little, if any, oversight of the scheme to make false and  
15 misleading statements, consciously disregarded his duties to monitor such controls over reporting and  
16 engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these  
17 reasons, Defendant Helgason breached his fiduciary duties, faces a substantial likelihood of liability, is  
18 not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

19 147. Additional reasons that demand on Defendant Henry is futile follow. Defendant Henry has  
20 served as a Company director since October 2018. She has received and continues to receive substantial  
21 compensation for her role as a director as described above. Defendant Henry personally signed the 2020  
22 10-K and 2021 10-K, which contained false and misleading statements and omissions. As a trusted  
23 Company director, she conducted little, if any, oversight of the scheme to make false and misleading  
24 statements, consciously disregarded her duties to monitor such controls over reporting and engagement in  
25 the scheme, and consciously disregarded her duties to protect corporate assets. For these reasons,  
26 Defendant Henry breached her fiduciary duties, faces a substantial likelihood of liability, is not  
27 independent or disinterested, and thus demand upon her is futile and, therefore, excused.  
28

1           148. Additional reasons that demand on Defendant Schuler is futile follow. Defendant Schuler  
2 has served as a Company director since April 2016. He has received and continues to receive substantial  
3 compensation for his role as a director as described above. Defendant Schuler personally signed the 2020  
4 10-K and 2021 10-K, which contained false and misleading statements and omissions. He benefited from  
5 the 2022 Proxy Statement, containing false and misleading statements, which led to his election to the  
6 Board and allowed him to breach his fiduciary duties to the Company. Moreover, Defendant Schuler  
7 engaged in insider trading, selling 10,000 shares of Unity common stock for proceeds of \$876,000 while  
8 the share price of Unity's common stock was artificially inflated. As a trusted Company director, he  
9 conducted little, if any, oversight of the scheme to make false and misleading statements, consciously  
10 disregarded his duties to monitor such controls over reporting and engagement in the scheme, and  
11 consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Schuler  
12 breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested,  
13 and thus demand upon him is futile and, therefore, excused.

14           149. Additional reasons that demand on Defendant Sisco is futile follow. Defendant Sisco has  
15 served as a Company director since July 2017. She has received and continues to receive substantial  
16 compensation for her role as a director as described above. Defendant Sisco personally signed the 2020  
17 10-K and 2021 10-K, which contained false and misleading statements and omissions. She benefited from  
18 the 2022 Proxy Statement, containing false and misleading statements, which led to her election to the  
19 Board and allowed her to breach her fiduciary duties to the Company. As a trusted Company director, she  
20 conducted little, if any, oversight of the scheme to make false and misleading statements, consciously  
21 disregarded her duties to monitor such controls over reporting and engagement in the scheme, and  
22 consciously disregarded her duties to protect corporate assets. For these reasons, Defendant Sisco  
23 breached her fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested,  
24 and thus demand upon her is futile and, therefore, excused.

25           150. Additional reasons that demand on Defendant Schmidt is futile follow. Defendant Schmidt  
26 has served as a Company director since September 2020. She has received and continues to receive  
27 substantial compensation for her role as a director as described above. Defendant Schmidt personally  
28

1 signed the 2020 10-K and 2021 10-K, which contained false and misleading statements and omissions. As  
2 a trusted Company director, she conducted little, if any, oversight of the scheme to make false and  
3 misleading statements, consciously disregarded her duties to monitor such controls over reporting and  
4 engagement in the scheme, and consciously disregarded her duties to protect corporate assets. For these  
5 reasons, Defendant Schmidt breached her fiduciary duties, faces a substantial likelihood of liability, is not  
6 independent or disinterested, and thus demand upon her is futile and, therefore, excused.

7 151. Additional reasons that demand on Defendant Smith is futile follow. Defendant Smith has  
8 served as a Company director since August 2021. She has received and continues to receive substantial  
9 compensation for her role as a director as described above. Defendant Smith personally signed the 2021  
10 10-K, which contained false and misleading statements and omissions. As a trusted Company director,  
11 she conducted little, if any, oversight of the scheme to make false and misleading statements, consciously  
12 disregarded her duties to monitor such controls over reporting and engagement in the scheme, and  
13 consciously disregarded her duties to protect corporate assets. For these reasons, Defendant Smith  
14 breached her fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested,  
15 and thus demand upon her is futile and, therefore, excused.

16 152. Defendants Sisco (as Chair), Botha, and Schuler (the “Audit Committee Defendants”)   
17 served on the Company’s Audit Committee during the Relevant Period. Pursuant to the Audit Committee  
18 Charter, the Audit Committee Defendants are responsible for overseeing, *inter alia*, the Company’s  
19 financial reporting processes and internal controls, the Company’s compliance with applicable law,  
20 including U.S. federal securities laws and other legal and regulatory requirements, and risk assessment  
21 and risk management pertaining to the financial matters of the Company. The Audit Committee  
22 Defendants failed to fulfill these obligations, as they are charged to do under the Audit Committee Charter,  
23 allowing the Company to issue materially false and misleading statements to the public during the  
24 Relevant Period and to fail to maintain internal controls. Thus, the Audit Committee Defendants breached  
25 their fiduciary duties, are not disinterested, and demand is excused as to them.

26 153. Demand in this case is further excused because the Director-Defendants are beholden to  
27 each other. The Director-Defendants have longstanding business and personal relationships with each  
28

1 other and the other Individual Defendants that preclude them from acting independently and in the best  
2 interests of the Company and the shareholders. For instance, Defendants Botha and Henry are both  
3 affiliated with Block, Inc., where Defendant Botha serves on the board of directors and Defendant Henry  
4 serves as Square Lead and Block Infrastructure and Information Security Lead. Additionally, as disclosed  
5 by the 2021 Proxy Statement, a trust affiliated with Defendant Botha issued to Defendant Riccitiello a  
6 personal loan which has since been repaid. Furthermore, since February 2018, Defendant Sisco has served  
7 as Co-President of Workday, Inc., which the Company purchases products and services from in the  
8 ordinary course of business. These conflicts of interest precluded the Director-Defendants from adequately  
9 monitoring the Company's operations and internal controls and calling into question the Individual  
10 Defendants' conduct. Thus, the Director-Defendants face a substantial likelihood of liability and demand  
11 is futile as to them.

12 154. In violation of the Code of Conduct and the Audit Committee Charter, the Director-  
13 Defendants conducted little, if any, oversight of the Company's internal controls over public reporting,  
14 and of the Company's engagement in the Individual Defendants' scheme to issue materially false and  
15 misleading statements to the public and facilitate and disguise the Individual Defendants' violations of  
16 law, including breaches of fiduciary duty, waste of corporate assets, unjust enrichment, violations of the  
17 Exchange Act, contribution under Sections 10(b) and 21D of the Exchange Act, and the claims alleged in  
18 the Securities Class Action. In violation of the Code of Conduct and the Audit Committee Charter, the  
19 Director-Defendants failed to comply with laws and regulations, maintain the accuracy of company  
20 records, public reports and communications, and uphold the responsibilities related thereto. Thus, the  
21 Director-Defendants face a substantial likelihood of liability and demand is futile as to them.

22 155. Unity has been and will continue to be exposed to significant losses due to the wrongdoing  
23 complained of herein, yet the Directors have not filed any lawsuits against the Director-Defendants or any  
24 others who were responsible for that wrongful conduct to attempt to recover for Unity any part of the  
25 damages Unity suffered and will continue to suffer thereby. Thus, any demand upon the Directors would  
26 be futile.

1           156. The Individual Defendants' conduct described herein and summarized above could not  
2 have been the product of legitimate business judgment as it was based on bad faith and intentional,  
3 reckless, or disloyal misconduct. Thus, none of the Director-Defendants can claim exculpation from their  
4 violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority  
5 of the Directors face a substantial likelihood of liability, they are self-interested in the transactions  
6 challenged herein and cannot be presumed to be capable of exercising independent and disinterested  
7 judgment about whether to pursue this action on behalf of the shareholders of the Company. Accordingly,  
8 demand is excused as being futile.

9           157. The acts complained of herein constitute violations of fiduciary duties owed by Unity's  
10 officers and directors, and these acts are incapable of ratification.

11           158. The Director-Defendants may also be protected against personal liability for their acts of  
12 mismanagement and breaches of fiduciary duty alleged herein by directors' and officers' liability  
13 insurance if they caused the Company to purchase it for their protection with corporate funds, i.e., monies  
14 belonging to the stockholders of Unity. If there is a directors' and officers' liability insurance policy  
15 covering the Director-Defendants, it may contain provisions that eliminate coverage for any action  
16 brought directly by the Company against the Director-Defendants, known as, *inter alia*, the "insured-  
17 versus-insured exclusion." As a result, if the Director-Defendants were to sue themselves or certain of the  
18 officers of Unity, there would be no directors' and officers' insurance protection. Accordingly, the  
19 Director-Defendants cannot be expected to bring such a suit. On the other hand, if the suit is brought  
20 derivatively, as this action is brought, such insurance coverage, if such an insurance policy exists, will  
21 provide a basis for the Company to effectuate a recovery. Thus, demand on the Director-Defendants is  
22 futile and, therefore, excused.

23           159. If there is no directors' and officers' liability insurance, then the Director-Defendants will  
24 not cause Unity to sue the Individual Defendants named herein, since, if they did, they would face a large  
25 uninsured individual liability. Accordingly, demand is futile in that event, as well.

**Against Defendants Riccitiello, Botha, Durban, Helgason, Henry, Schmidt, Schuler, Sisco, and Smith for Violations of Section 14(a) of the Exchange Act**

162. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that “[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title [15 U.S.C. § 78l].”

164. Under the direction and watch of Defendants Riccitiello, Botha, Durban, Helgason, Henry, Schmidt, Schuler, and Sisco, the 2021 Proxy Statement failed to disclose, *inter alia*, that: (1) contrary to the 2021 Proxy Statement's description of the Board's risk oversight function, the Board failed in the administration of its risk oversight function, resulting in the Individual Defendants' misconduct and breach of their fiduciary duties; (2) contrary to the 2021 Proxy Statement's description of the Audit Committee's responsibilities, the Audit Committee was not adequately exercising these functions, was causing or permitting Unity to issue false and misleading statements, and the Individual Defendants on the Board and the Audit Committee at that time were breaching their fiduciary duties; and (3) although the Company claimed the Code of Conduct applied to all officers and directors and that it would disclose

1 any waivers of the policy, the Individual Defendants violated the Code of Conduct either without waivers  
2 or without such waivers being disclosed.

3 165. Furthermore, under the direction of Defendants Riccitiello, Botha, Durban, Helgason,  
4 Henry, Schmidt, Schuler, and Sisco, the 2021 Proxy Statement failed to disclose, *inter alia*, that: (1)  
5 technical issues with the Company's monetization platform caused a data quality issue as well as problems  
6 with the accuracy of the Company's Audience Pinpointer tool; (2) the drop in the accuracy of the Audience  
7 Pinpointer tool led to a drop in the usage of the tool, impacting the Company's monetization business; (3)  
8 due to the foregoing, the Company's revenues were likely to be negatively affected; (4) accordingly, a  
9 reduction in the Company's guidance for the full year ending December 31, 2022 was to be expected; (5)  
10 as a result, the Company had overstated its prospects for 2022; and (6) the Company failed to maintain  
11 internal controls. As a result of the foregoing, the Company's public statements were materially false and  
12 misleading at all relevant times.

13 166. In the exercise of reasonable care, Defendants Riccitiello, Botha, Durban, Helgason,  
14 Henry, Schmidt, Schuler, and Sisco should have known that by misrepresenting or failing to disclose the  
15 foregoing material facts, the statements contained in the 2021 Proxy Statement were materially false and  
16 misleading. The misrepresentations and omissions were material to Plaintiff in voting on the matters set  
17 forth for shareholder determination in the 2021 Proxy Statement, including but not limited to, the election  
18 of directors.

19 167. The false and misleading elements of the 2021 Proxy Statement led Company shareholders,  
20 *inter alia*, to elect Defendants Riccitiello, Botha, and Helgason to the Board, allowing them to continue  
21 breaching their fiduciary duties to the Company.

22 168. The Company was damaged as a result of Defendants Riccitiello, Botha, Durban,  
23 Helgason, Henry, Schmidt, Schuler, and Sisco's material misrepresentations and omissions in the 2021  
24 Proxy Statement.

25 169. Moreover, under the direction and watch of Defendants Riccitiello, Botha, Durban,  
26 Helgason, Henry, Schmidt, Schuler, Sisco, and Smith, the 2022 Proxy Statement failed to disclose, *inter*  
27 *alia*, that: (1) contrary to the 2022 Proxy Statement's description of the Board's risk oversight function,  
28



1 the Board failed in the administration of its risk oversight function, resulting in the Individual Defendants'  
2 misconduct and breach of their fiduciary duties; (2) contrary to the 2022 Proxy Statement's description of  
3 the Audit Committee's responsibilities, the Audit Committee was not adequately exercising these  
4 functions, was causing or permitting Unity to issue false and misleading statements, and the Individual  
5 Defendants on the Board and the Audit Committee at that time were breaching their fiduciary duties; and  
6 (3) although the Company claimed the Code of Conduct applied to all officers and directors and that it  
7 would disclose any waivers of the policy, the Individual Defendants violated the Code of Conduct either  
8 without waivers or without such waivers being disclosed.

9 170. Furthermore, under the direction of Defendants Riccitiello, Botha, Durban, Helgason,  
10 Henry, Schmidt, Schuler, Sisco, and Smith, the 2022 Proxy Statement failed to disclose, *inter alia*, that:  
11 (1) technical issues with the Company's monetization platform caused a data quality issue as well as  
12 problems with the accuracy of the Company's Audience Pinpointer tool; (2) the drop in the accuracy of  
13 the Audience Pinpointer tool led to a drop in the usage of the tool, impacting the Company's monetization  
14 business; (3) due to the foregoing, the Company's revenues were likely to be negatively affected; (4)  
15 accordingly, a reduction in the Company's guidance for the full year ending December 31, 2022 was to  
16 be expected; (5) as a result, the Company had overstated its prospects for 2022; and (6) the Company  
17 failed to maintain internal controls. As a result of the foregoing, the Company's public statements were  
18 materially false and misleading at all relevant times.

19 171. In the exercise of reasonable care, Defendants Riccitiello, Botha, Durban, Helgason,  
20 Henry, Schmidt, Schuler, Sisco, and Smith should have known that by misrepresenting or failing to  
21 disclose the foregoing material facts, the statements contained in the 2022 Proxy Statement were  
22 materially false and misleading. The misrepresentations and omissions were material to Plaintiff in voting  
23 on the matters set forth for shareholder determination in the 2022 Proxy Statement, including but not  
24 limited to, the election of directors.

25 172. The false and misleading elements of the 2022 Proxy Statement led Company shareholders,  
26 *inter alia*, to: (1) elect Defendants Durban, Schuler, and Sisco to the Board, allowing them to continue  
27 breaching their fiduciary duties to the Company; and (2) approve, on an advisory basis, the compensation  
28

1 of the Company's named executive officers, including Defendants Riccitiello and Visoso, who were  
 2 breaching their fiduciary duties to the Company.

3 173. The Company was damaged as a result of Defendants Riccitiello, Botha, Durban,  
 4 Helgason, Henry, Schmidt, Schuler, Sisco, and Smith's material misrepresentations and omissions in the  
 5 2022 Proxy Statement.

6 174. Plaintiff on behalf of Unity has no adequate remedy at law.

## 7 **SECOND CLAIM**

### 8 **Against Individual Defendants for Breach of Fiduciary Duties**

9 175. Plaintiff incorporates by reference and realleges each and every allegation set forth above,  
 10 as though fully set forth herein.

11 176. Each Individual Defendant owed to the Company the duty to exercise candor, good faith,  
 12 and loyalty in the management and administration of Unity's business and affairs.

13 177. Each of the Individual Defendants violated and breached his or her fiduciary duties of  
 14 candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

15 178. The Individual Defendants' conduct set forth herein was due to their intentional or reckless  
 16 breach of the fiduciary duties they owed to the Company, as alleged herein. The Individual Defendants  
 17 intentionally or recklessly breached or disregarded their fiduciary duties to protect the rights and interests  
 18 of Unity.

19 179. In breach of their fiduciary duties owed to Unity, the Individual Defendants willfully or  
 20 recklessly made and/or caused the Company to make false and misleading statements and omissions of  
 21 material fact that failed to disclose, *inter alia*, that: (1) technical issues with the Company's monetization  
 22 platform caused a data quality issue as well as problems with the accuracy of the Company's Audience  
 23 Pinpointer tool; (2) the drop in the accuracy of the Audience Pinpointer tool led to a drop in the usage of  
 24 the tool, impacting the Company's monetization business; (3) due to the foregoing, the Company's  
 25 revenues were likely to be negatively affected; (4) accordingly, a reduction in the Company's guidance  
 26 for the full year ending December 31, 2022 was to be expected; (5) as a result, the Company had overstated  
 27  
 28

1 its prospects for 2022; and (6) the Company failed to maintain internal controls. As a result of the  
2 foregoing, the Company's public statements were materially false and misleading at all relevant times.

3 180. The Individual Defendants failed to correct and/or caused the Company to fail to rectify  
4 any of the wrongs described herein or correct the false and misleading statements and omissions of  
5 material fact referenced herein, rendering them personally liable to the Company for breaching their  
6 fiduciary duties.

7 181. Also in breach of their fiduciary duties, the Individual Defendants failed to maintain an  
8 adequate system of oversight, disclosure controls and procedures, and internal controls.

9 182. In yet further breach of their fiduciary duties, during the Relevant Period, six of the  
10 Individual Defendants engaged in lucrative insider sales, netting proceeds of approximately \$734.8  
11 million, while the price of the Company's common stock was artificially inflated due to the false and  
12 misleading statements of material fact discussed herein.

13 183. The Individual Defendants had actual or constructive knowledge that they had caused the  
14 Company to improperly engage in the fraudulent scheme set forth herein and to fail to maintain adequate  
15 internal controls. The Individual Defendants had actual knowledge that the Company was engaging in the  
16 fraudulent scheme set forth herein, and that internal controls were not adequately maintained, or acted  
17 with reckless disregard for the truth, in that they caused the Company to improperly engage in the  
18 fraudulent scheme and to fail to maintain adequate internal controls, even though such facts were available  
19 to them. Such improper conduct was committed knowingly or recklessly and for the purpose and effect of  
20 artificially inflating the price of the Company's securities and engaging in insider sales. The Individual  
21 Defendants, in good faith, should have taken appropriate action to correct the schemes alleged herein and  
22 to prevent them from continuing to occur.

23 184. These actions were not a good-faith exercise of prudent business judgment to protect and  
24 promote the Company's corporate interests.

25 185. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary  
26 obligations, Unity has sustained and continues to sustain significant damages. As a result of the  
27 misconduct alleged herein, the Individual Defendants are liable to the Company.  
28

186. Plaintiff on behalf of Unity has no adequate remedy at law.

### **THIRD CLAIM**

#### **Against Individual Defendants for Waste of Corporate Assets**

187. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

188. As a further result of the foregoing, and by failing to properly consider the interests of the Company and its public shareholders, Defendants have caused the Company to waste valuable corporate assets, to incur many millions of dollars of legal liability and costs to defend unlawful actions, and to lose financing from investors and business from future customers who no longer trust the Company and its products.

189. As a result of the waste of corporate assets, the Individual Defendants are each liable to the Company.

190. Plaintiff on behalf of Unity has no adequate remedy at law.

### **FOURTH CLAIM**

#### **Against Individual Defendants for Unjust Enrichment**

191. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

192. By their wrongful acts, violations of law, and false and misleading statements and omissions of material fact that they made and/or caused to be made, the Individual Defendants were unjustly enriched at the expense of, and to the detriment of, Unity.

193. The Individual Defendants either benefited financially from the improper conduct and their lucrative insider sales, or received unjustly lucrative bonuses tied to the false and misleading statements, or received bonuses, stock options, or similar compensation from Unity that was tied to the performance or artificially inflated valuation of Unity, or received compensation that was unjust in light of the Individual Defendants' bad faith conduct.

194. Plaintiff, as a shareholder and representative of Unity, seeks restitution from the Individual Defendants and seeks an order from this Court disgorging all profits—including from insider sales,

benefits, and other compensation, including any performance-based or valuation-based compensation—  
obtained by the Individual Defendants due to their wrongful conduct and breach of their fiduciary duties.

195. Plaintiff on behalf of Unity has no adequate remedy at law.

#### **FIFTH CLAIM**

#### **Against Defendants Riccitiello, Jabal, and Visoso for Contribution Under Sections 10(b) and 21D of the Exchange Act**

196. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

197. Defendants Riccitiello, Jabal, and Visoso are each named as defendants in the Securities Class Action, which asserts claims under the federal securities laws for violations of Sections 10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder. If and when the Company is found liable in the Securities Class Action for these violations of the federal securities laws, the Company's liability will be in whole or in part due to Defendants Riccitiello, Jabal, and Visoso's willful and/or reckless violations of their obligations as officers and/or directors of Unity.

198. Defendants Riccitiello, Jabal, and Visoso, because of their positions of control and authority as officers and/or directors of Unity, were able to and did, directly and/or indirectly, exercise control over the business and corporate affairs of Unity, including the wrongful acts complained of herein and in the Securities Class Action.

199. Accordingly, Defendants Riccitiello, Jabal, and Visoso are liable under 15 U.S.C. § 78j(b), which creates a private right of action for contribution, and Section 21D of the Exchange Act, 15 U.S.C. § 78u-4(f), which governs the application of a private right of action for contribution arising out of violations of the Exchange Act.

200. As such, Unity is entitled to receive all appropriate contribution or indemnification from Defendants Riccitiello, Jabal, and Visoso.

#### **PRAYER FOR RELIEF**

FOR THESE REASONS, Plaintiff demands judgment in the Company's favor against all Individual Defendants as follows:

(a) Declaring that Plaintiff may maintain this action on behalf of Unity, and that

1 Plaintiff is an adequate representative of the Company;

2 (b) Declaring that the Individual Defendants have breached and/or aided and abetted  
3 the breach of their fiduciary duties to Unity;

4 (c) Determining and awarding to Unity the damages sustained by it as a result of the  
5 violations set forth above from each of the Individual Defendants, jointly and severally, together with pre-  
6 judgment and post-judgment interest thereon;

7 (d) Directing Unity and the Individual Defendants to take all necessary actions to  
8 reform and improve its corporate governance and internal procedures to comply with applicable laws and  
9 to protect Unity and its shareholders from a repeat of the damaging events described herein, including,  
10 but not limited to, putting forward for shareholder vote the following resolutions for amendments to the  
11 Company's Bylaws and/or Certificate of Incorporation and the following actions as may be necessary to  
12 ensure proper corporate governance policies:

13 1. a proposal to strengthen the Board's supervision of operations and develop and  
14 implement procedures for greater shareholder input into the policies and guidelines of the  
15 Board;

16 2. a provision to permit the shareholders of Unity to nominate at least seven candidates  
17 for election to the Board; and

18 3. a proposal to ensure the establishment of effective oversight of compliance with  
19 applicable laws, rules, and regulations.

20 (e) Awarding Unity restitution from the Individual Defendants, and each of them;

21 (f) Awarding Plaintiff the costs and disbursements of this action, including reasonable  
22 attorneys' and experts' fees, costs, and expenses; and

23 (g) Granting such other and further relief as the Court may deem just and proper.  
24  
25  
26  
27  
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**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: November 22, 2022

Respectfully submitted,

**THE ROSEN LAW FIRM, P.A.**

By: /s/ Laurence M. Rosen  
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*Counsel for Plaintiff*



**VERIFICATION**

I, Krishna Movva am a plaintiff in the within action. I have reviewed the allegations made in this shareholder derivative complaint, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this \_th day of \_\_\_\_\_, 2022.

DocuSigned by:*Krishna Movva*43GFC5372B3344F

Krishna Movva